

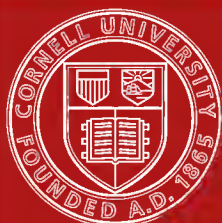
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SEVENTH DAY.

ROOM 210, CUSTOM HOUSE BUILDING,
NEW YORK CITY, Tuesday, May 14, 1912.

The hearing was resumed at 10:15 o'clock a. m., before
Special Examiner Henry P. Brown.

JAMES P. McFARLAND,

called as a witness in behalf of the United States, being first
duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Where do you live, Mr. McFarland?

A. I live just out of Philadelphia; north of Philadelphia.

Q. How long have you lived there?

A. About twenty years.

Q. What is your age?

A. Not quite 61.

Q. In what business are you engaged?

A. I am a jobber of tin plate and metals.

Q. What is the name of your firm?

A. Gummy, McFarland & Company.

Q. How long have you been associated with that firm?

A. Since 1879.

Q. And that firm has been continuously engaged in that
business during that time?

A. Yes, sir.

Q. Just state, Mr. McFarland, what the business of that
firm has been in connection with tin plate; whether you have
handled it and sold it.

A. We have always handled tin plate and distributed it
as jobbers.

Q. Over what section of the country?

A. All the eastern part of the United States; and the West,
but not the extreme West.

Q. Were you a manufacturer of tin plate or not?

A. At one time we dipped plates.

Q. When was that?

A. That was before the formation of the Tin Plate Company.

Q. Since that time you have bought tin plate?

A. Yes.

Q. And have sold it generally in the trade?

A. Yes, sir.

Q. Mainly in the eastern part of the country?

A. The eastern part of the country and as far west as Milwaukee.

Q. State whether or not, Mr. McFarland, in the conduct of your business in the solicitation of and the supplying of the trade you came in contact with and knew those concerns in this country who were making tin plate from time to time from the time the industry began in this country down to the present time.

A. You want to know my experience?

Q. I want to know if you were generally acquainted with them.

A. Yes; we were generally acquainted with them.

Q. It was a part of your business to become acquainted with them?

A. Yes, sir; to a certain extent.

Q. To know those who were in the market and in the business?

A. We knew them generally.

Q. Did they or not solicit your trade?

A. You mean the manufacturers at large?

Q. The different makers.

A. Yes, sir.

Q. And would you or would you not look them up and buy from those who presented favorable terms?

A. We never had any trouble in buying all the tin plate we wanted.

Q. Did you have any private brands?

A. Yes, sir.

Q. Explain, Mr. McFarland, the nature of these brands and their significance. You were a jobber, were you?

A. Yes, sir.

Q. Explain the significance that these brands had to a jobber in his trade and in keeping up his trade?

A. We had a number of private brands stamped with our name, and they were a valuable asset in our business.

Q. You had built up a reputation, had you, for those brands?

A. Yes, sir.

Q. Were they known in the trade on account of their merit?

A. They were; yes, sir.

Q. And they were known by their names?

A. Yes, sir.

Q. State whether or not they were called for by the brand name by people who used that character of tin?

A. They were, by the brand names.

Q. Were they known to architects?

A. Yes, sir.

Q. And the smaller dealers who bought them from you?

A. Yes, sir.

Q. Was or was not the business of people like you, who had brands and had built up a trade through the acquaintanceship that the trade acquired of those brands largely dependent upon those brands?

A. A great many were, and used those entirely.

Q. Suppose, Mr. McFarland, for any reason a considerable period, say a year or six months, should intervene when you could not get those brands made, what effect would that have on a business of that character?

A. They would have to use other brands of equal quality.

Q. State what effect that would have upon those who, previous to that, had been accustomed to specify those brands and want them for use.

MR. LINDABURY: That is objected to as calling for a speculation and opinion evidence.

(By request, the stenographer repeated the question.)

By MR. DICKINSON:

Q. Do you understand that question?

A. I do.

Q. Please answer it, will you?

A. Shall I answer it?

Q. Oh, yes; answer it.

MR. LINDABURY: There is nobody to rule on the questions, Mr. McFarland; we simply note our objections for the purposes of the record.

THE WITNESS: The inquirer for those brands might have to make his purchases in another direction. The architect who had specified them or the owner who wanted them on his building would have to allow another brand of plate to be put on.

By MR. DICKINSON:

Q. Then other brands would be delivered in place of those brands?

A. Yes, sir.

Q. What effect would that have upon the trade of a man who had built up a reputation upon those brands and the continuity of supply of those brands?

MR. LINDABURY: We make the same objection as before.

A. It might result in a smaller sale of those brands, and the use of brands that had taken their place for the time being, particularly if the other brands were of as good a quality.

By MR. DICKINSON:

Q. State whether or not it might result in the shifting of custom and business.

MR. LINDABURY: That is objected to. I suppose it may be understood that this line of inquiry is under the same objection, without my repeating the objection each time?

MR. DICKINSON: Yes.

MR. LINDABURY: My objection is that it calls for speculation on the part of the witness.

MR. DICKINSON: I am calling for his opinion as an expert.

MR. LINDABURY: I object to it as opinion evidence.

A. What do you mean by "shifting of custom and business"?

By MR. DICKINSON:

Q. Shifting of custom to other dealers.

A. Yes; to a certain extent it might.

Q. Would that, or would it not, in your judgment, be injurious to a man who could not continue to supply his brand for any reason in the market?

A. Yes; there would be an injury.

Q. After the formation of the American Tin Plate Company did you or did you not enter into any contracts with that company whereby they agreed to manufacture your brands of tin, and you agreed to assign to them your brands?

A. Yes. Before making the brands, and after having made them for a time, they decided that we must assign our brands to them if we wanted them manufactured.

Q. State whether or not that was a condition upon which they agreed to continue to make your brands?

A. That was the condition.

Q. If you wanted them to make your brands, you had to assign those brands to them?

A. We had to assign those brands to them.

Q. Have you a letter with you of March 13, 1899, from Mr. O. M. Stuart?

A. Yes, sir.

Q. This letter is written to Gummy, McFarland & Company, of Philadelphia, Pennsylvania, and is signed by the American Tin Plate Company, by O. M. Stuart, Sales Agent?

A. Yes, sir.

Q. There is also a memorandum attached thereto?

A. Yes, sir.

Q. You identify those?

A. I do.

MR. DICKINSON: I now offer the letter and the attached memorandum in evidence.

(The papers so identified were thereupon offered in evidence and marked "Government's Exhibits Nos. 75 and 76, May 14, 1912.")

MR. DICKINSON: I will read the letter, Government's Exhibit No. 75:

(Reading)

“CHICAGO, Mar. 13, 1899.

“GUMMY, McFARLAND & Co.,
“Philadelphia, Pa.

“GENTLEMEN :

“We are duly in receipt of your favor of the 10th inst., in regard to your ‘Phoenix’ and ‘Alderly’ brands of terne plate.

“It is the company’s intention to continue the furnishing of private brands subject to special arrangements, the main points of which are embodied in the enclosed memorandum.

“Please read the same, and on receipt of your reply that it is satisfactory to you, we shall be pleased to make quotations on such plates as you require thereunder.

“We have forwarded a copy of this letter to Mr. Dickerson, of #55 Fulton St., New York City, our Eastern Sales Agt., with whom kindly take this matter up at your convenience.

“Very truly yours,

“AMERICAN TIN PLATE Co.,

“C. M. Stuart,

“Sales Agt.

“Please address reply to Sales Department.”

And the memorandum reads as follows:

“MEMORANDUM.

“We shall continue to furnish private brands under arrangement with buyers covering the following principal points:

“FIRST: A full description of the quality and character of each particular brand, and a statement of the number of boxes, 20x28, of such brand handled during the year 1898, to be furnished this company, and when such brand is approved by it, it will be manufactured for the exclusive use of the person, firm or corporation submitting such informa-

tion and complying with the further conditions hereinafter proposed.

“The purpose of this provision is to avoid, as far as possible, the manufacture of plates of inferior quality, or increasing the number of brands beyond the list of those well introduced and for which a good trade is already established.

“SECOND: On the approval by the company of a private brand, and its agreement to use the same solely for the plates of the concern entitled to such use, a formal conveyance is to be made to this company of such brand. The title acquired by the company, however, to be non-assignable, and to revert to the original owner, if the company should dissolve, go out of business, or assign.

“The purpose of this provision is to protect this company in the exclusive manufacture of plates under the several brands that may be assigned to them, and to compensate it in a measure for the loss of opportunity to build up a reputation for the brands it would otherwise establish and distribute. It may be said that no value is conveyed under this arrangement, as the value of a brand or trade-mark is solely in its use, and that remains for the benefit of its original owner.

“The company will obligate itself that this exclusive right to manufacture will not be used as a means of increasing the price on any brands considered, and in fact, of great value, because of an established reputation, but that their prices will be governed strictly by the quality of the plates furnished, and relative to the selling price of other plates it may manufacture under its own particular brands.

“THIRD: The obligation of the company to continue the manufacture of any brand shall be made contingent on buyer's restricting all purchases of tin and terne plates to its products, and the company shall have the right to discontinue the manufacture of such brands on evidence satisfactory to its Sales Department that buyer has not so restricted purchases. This condition, however, is not intended to remove the restriction as to the exclusive use of any brand for other concerns than its original owner.”

By MR. DICKINSON :

Q. State whether or not you followed up this matter and whether or not you entered into a contract with the American Tin Plate Company, or a succession of contracts, under which you assigned to them your tin plate brands.

A. We entered into a succession of contracts. We assigned a number of brands. You have the papers there.

(The witness was handed a paper, hereinafter introduced in evidence and marked "Government's Exhibit No. 77," which he examined and passed back to counsel for the Government.)

MR. LINDABURY: Judge, are they on the forms you introduced as exhibits yesterday?

MR. DICKINSON: These were earlier than that.

MR. LINDABURY: I was hoping we might shorten it——

MR. DICKINSON: The form is substantially the same, however.

MR. LINDABURY: Is it worth while to put in duplicates, then?

MR. DICKINSON: I am not intending to put all these in evidence, provided we can enter a stipulation on the record. That is to say, I will probably put in one, and then you can examine these, and if they are the same, we can agree to that on the record. Suppose you look at these, and then I will introduce one form, and then I will state that the others are similar, giving the dates.

MR. LINDABURY: I would not have time now to compare this with the forms introduced as exhibits yesterday. What I meant to inquire was whether the forms were ever changed.

MR. DICKINSON: These were forms they used (indicating); there is some little difference, as you will see.

MR. LINDABURY: I should think we might, by some arrangement, get in all the different forms, if they changed them from time to time, and then let the dates be given, or let the witness testify——

MR. DICKINSON: I do not care about putting all these in the record, because they are duplicates of each other.

MR. LINDABURY: I understand that you would not want to do that.

MR. DICKINSON: I will read one and state that the others are in substance the same, giving their dates.

MR. LINDABURY: Yes, I think that would be best.

MR. DICKINSON: I now offer in evidence this agreement, which has been examined by the witness.

(The paper so identified was offered in evidence and marked "Government Exhibit No. 77, May 14, 1912.")

MR. DICKINSON: I will now read this agreement dated the 22nd day of March, A. D., 1899, between the American Tin Plate Company and Gummy, McFarland & Company, of Philadelphia.

(Mr. Dickinson read aloud the paper referred to, the same being marked "Government Exhibit No. 77, May 14, 1912," and to be found in the book of exhibits.)

MR. LINDABURY: I understand that all these exhibits are printed in a separate book of exhibits. If that is so, is it necessary for the stenographer to take down the exhibits as they are read, and to have them appear in full in the body of the record? In other words, is it necessary to have the exhibits printed twice—because we will have record enough without having them in twice, it seems to me.

MR. DICKINSON: I think that is a good suggestion, and so the stenographer need not take down the exhibits as they are read.

By MR. DICKINSON:

Q. Did you or did you not enter into that contract with the American Tin Plate Company?

A. Yes, sir.

Q. Under which, as a condition, to their making brands you had assigned to them your private brands?

A. Yes.

Q. And if you bought from anyone else your brands would be forfeited?

MR. LINDABURY: I object. The contract speaks for itself.

MR. DICKINSON: I want his understanding of it.

A. We understood the contract—

By MR. DICKINSON:

Q. You understood it that way?

A. Yes, sir.

Q. State whether or not at that time there was any other maker of tin plate in this country besides the American Tin Plate Company by whom you could have gotten your brands made.

A. I think there was not.

Q. To the best of your knowledge of the situation, there was not?

A. I think there was not, to the best of my knowledge.

Q. Can you name any other maker of tin plate at that time in the United from whom you could have gotten your tin plate made with those brands except the American Tin Plate Company?

A. I do not think I could mention a maker who made the tin all the way from the raw material, who could satisfactorily produce the plates.

Q. State, Mr. McFarland, whether or not under the conditions then prevailing, and the companies that had gone into the Tin Plate Company, it was necessary, in order for you to get your brands made, to have that company make them?

A. When the Tin Plate Company came into existence, they took over the mills that made some of our brands, and for a time they made them, as we had contracts with the mills previously.

Q. But after those contracts expired——

A. After that, when that time arrived, we were obliged to have the American Tin Plate Company make them for us.

Q. And obliged to assign your brands to them, in order to get them made?

A. Yes.

Q. And if you bought from anybody else, you would have forfeited your brands?

MR. LINDABURY: I object. That has been asked four or five times.

MR. DICKINSON: It is a pretty good thing to have brought out clearly. I want to have it impressed.

MR. LINDABURY: We will agree to it beforehand. We want that evidence in as much as you do.

MR. DICKINSON: You did not tell me beforehand.

MR. LINDABURY: We have not time to take it five times over; that is all.

By MR. DICKINSON:

Q. You made contracts covering other brands, did you, before those mentioned here?

A. What do you mean—besides those, or this one? Do you mean all?

Q. The others?

A. Oh, others. We assigned other brands.

Q. And they were like this?

A. In substance.

Q. The substance was the same?

A. Yes.

Q. How long did you continue to make these contracts?

A. You have them all there, all the assignments we made.

MR. DICKINSON: We will just put the dates in. The latest here seems to be—

MR. LINDABURY: Will you not take them up chronologically if you are going to put them in?

MR. DICKINSON: I am going to say that there are a number, continuing down to July 2, 1907.

MR. LINDABURY: If you are going to name them all—

MR. DICKINSON: They were continued from time to time down to 1907.

By MR. DICKINSON:

Q. Is that the fact?

A. Yes, sir.

Q. State what arrangement, if any, the American Tin Plate Company had with its customers whereby a rebate or credit was given upon the understanding that the jobber purchased 85 per cent. of all of his purchases, his tin plate, from that company.

A. There was part of the purchase price held back.

Q. Was there or not an arrangement of that sort made with the jobbers?

A. Yes, sir.

Q. That is to say that considering their purchases from all makers, those from the Tin Plate Company and those from manufacturers outside of the Tin Plate Company, if they purchased 85 per cent. or more from the Tin Plate Company, then they were to get a rebate or a credit?

A. There was a part of the purchase price held back. At first the understanding was that all supplies were to be bought from the company. Later on it was reduced to 85 per cent.

Q. When did that arrangement begin, whereby you had to purchase all from them and none from outsiders in order to get this credit or reduction?

A. I could not state just the date.

Q. Well, about the date?

A. I think about 1902 was the start.

Q. About 1902?

A. The end of the year 1902.

Q. For a while it continued, so that all the purchases had to be from them, did it?

A. That was for a time.

Q. Then there was a reduction in that percentage?

A. A reduction, to 90 per cent, I think, I am not certain.

Q. And then to 85 per cent? .

A. To 85 per cent.

Q. This percentage or credit was not conditioned upon the volume of your business, but the comparative amount that you bought as between them and others?

A. As to whether we bought 85 per cent. of our total purchases from the company.

Q. See whether you identify these forms. (Handing papers to witness.) I do not mean those particular contracts, but the forms, as being substantially the kind you used?

A. I was not familiar with this one, the 90 per cent.

Q. Pass that back, then. How about the other?

A. The 85, and the total amount I was familiar with.

MR. LINDABURY: Judge, there is not any dispute between

us about these things. We would save a lot of time if you want us to stipulate as to them.

MR. DICKINSON: Mr. Lindabury, you understand I cannot always tell what there is a dispute about. We have never gotten together, you see, to find out whether there was a dispute, or whether there was not, and your saying there is not a dispute does not make a stipulation or agreement. It is not binding upon you and is not binding upon your clients.

MR. LINDABURY: No; but I say if you choose we will admit these things. I do not make objection.

MR. DICKINSON: I will have these marked, and offer them in evidence as having been agreed by counsel to be copies of such agreements as were in use at that time.

MR. REED: Not agreements, Judge Dickinson.

MR. DICKINSON: Forms, then. What would you call them if you would not call them agreements?

MR. REED: Call it a conditional credit.

MR. DICKINSON: A form of conditional credit.

MR. REED: It does not bind the buyer at all.

MR. DICKINSON: I understand. Form of conditional credit that was sent to the buyers and in use at that time.

MR. LINDABURY: Judge, I did not see the one that you first had. Was it one filled up, or was it a mere form?

MR. DICKINSON: These are filled up, but the party is not here, and if I get them in now it will just save bringing him here.

MR. LINDABURY: I wondered if these blanks would not answer the purpose.

MR. CORNEAU: The blanks are of later date, Mr. Lindabury and therefore slightly different in form.

MR. DICKINSON: These blanks are American Sheet & Tin Plate; those are American Tin Plate; they are older.

MR. LINDABURY: I have one, Judge, from the American Tin Plate Company, and one from the American Sheet & Tin Plate Company. Those are what you are offering?

MR. DICKINSON: Yes, sir.

MR. LINDABURY: Let us see the others.

MR. DICKINSON: This is American Sheet & Tin Plate.

(The paper so identified, being conditional credit form, American Tin Plate Company, No. 324, dated January 19th, 1903, was offered in evidence, and marked "Government Exhibit No. 78, May 14, 1912.")

(The paper so identified, being conditional credit form, American Sheet & Tin Plate Company, No. 5532, dated June 18, 1904, was offered in evidence, and marked "Government Exhibit 79, May 14, 1912.")

(Credit memorandum, American Sheet & Tin Plate Company, No. J-18919, dated April 15, 1908, was offered in evidence and marked "Government Exhibit No. 80, May 14, 1912.")

By MR. DICKINSON:

Q. Mr. McFarland, state whether or not there was a similar arrangement as to sheet steel.

A. There was.

Q. You were in that business, too?

A. Yes, sir.

Q. Were contracts similar to those you have described in respect to tin plate made for these credit allowances in respect to sheet steel?

A. There were. You have one in your hand, I think; at least one of those.

Q. Well, it is not necessary to put it in.

MR. LINDABURY: He says it is of a similar character.

MR. DICKINSON: I would like to note of record that it is agreed it is not necessary to put the original in.

By MR. REED:

Q. What percentage was allowed?

A. The same percentage.

MR. LINDABURY: The amount of credit discount has not been mentioned yet, I think.

MR. DICKINSON: Oh, yes.

MR. REED: It has been shown in these papers put in evidence.

MR. LINDABURY: But has not been read by Judge Dickinson.

MR. DICKINSON: The agreements show it.

MR. LINDABURY: I have learned, Judge, to think that what you do not read we possibly ought to.

MR. DICKINSON: I do not know what you mean by that, Mr. Lindabury.

MR. LINDABURY: I mean, you are bringing out your side of the case, and we have to look out for ours. That does not mean that you are not acting fairly, of course.

MR. DICKINSON: I would like to have that explanation.

MR. LINDABURY: You are not expected to try our case.

MR. DICKINSON: No, and I am not, in reading a paper, failing to read anything that I think fairly bears upon it, either.

Now, the question is whether or not we shall agree, in not putting in these papers, whether or not there were similar contracts with regard to sheet steel as with regard to tin plate.

MR. REED: Not contracts, Judge; similar allowances.

MR. DICKINSON: Similar allowances.

MR. LINDABURY: Under a similar system.

MR. DICKINSON: Under a similar system. Very well. You may take the witness.

CROSS-EXAMINATION.

By MR. REED:

Q. Mr. McFarland, the manufacturers of tin plate and terne plate had their own brands, had they not, when this system was established?

A. A few of them.

Q. Did the American Tin Plate Company have its own brands?

A. I do not know whether it had at that time.

Q. You never bought any of them, did you?

A. Yes, sir.

Q. Of its own brand?

A. During part of this period. Do you refer to a very early date, when it was first formed?

Q. I refer to the year 1900, or at the time this assignment was first made.

A. Well, I am not able to state that definitely.

Q. Most of the time between 1899 and 1907 the American Tin Plate Company and the American Sheet & Tin Plate Company had their own brands for terne plate and tin plate, had they not?

A. Most of the time during that period, yes.

Q. When you asked the manufacturers to put your brand on tin plate or terne plate, as manufactured for you, there was on that plate nothing to show who actually made it, was there.

A. No.

Q. It bore your brand and your name?

A. It did.

Q. But not the name or the brand of the manufacturer?

A. You are correct; it did not.

Q. Then, any good will that was created by the success of those brands would be in the brand itself, would it not, and not in the name of the manufacturer?

A. It would be in the brand itself, and in the jobber who sold it.

Q. So that without these assignments of brands the American Sheet & Tin Plate Company would have been simply building up your good will, building up the value of your brand, without obtaining any good will of its own, or in its own name, by manufacturing under this system for you?

A. If for any reason the brand became the property of the company they would obtain, possibly, some value.

Q. But I ask you if they manufactured your brands for you without requiring an assignment?

A. Oh, I did not catch that.

Q. The consequent good will that would follow would all be in your name and in your brand, would it not?

A. It would.

Q. And these brands of plate that were made for you were sold in the markets for the same purpose and to the same kind of customers as the similar plate that bore the private brand of the American Sheet & Tin Plate Company; is that correct?

A. The terne plate brands, yes, for the same purpose as the terne plate brands of the company.

Q. But your tin plate brands?

A. We did not have any tin plate brands; no, sir.

Q. Then all these assignments covered only brands on terne plate?

A. Terne plate was for roofing purposes.

Q. Terne plate, as I understand it, is a steel plate coated with a mixture of lead and tin.

A. I so understand it.

Q. Used for roofing purposes?

A. Roofing purposes.

Q. Tin plate is a plate covered with coats of tin, used principally for canning purposes?

A. Tinware, and in some cases for roofing.

Q. Do you know what the word terne means?

A. It means the mixture of the lead coating.

MR. LINDABURY: It is spelled terne, is it not?

THE WITNESS: Yes, sir.

By MR. REED:

Q. These assignments of brands were made by you only of brands of terne plate, if I correctly understand it?

A. Yes, sir.

Q. They did not cover any of your tin plate brands?

A. They did not.

Q. Are you sufficiently familiar with the business to tell us about what percentage of the American Tin Plate Company's business was terne plate in the year 1900?

A. No, sir; I could not answer that question.

Q. It was a very small percentage, was it not?

A. No; I do not think it was a very small percentage.

Q. Not much more than ten per cent. of its business, was it?

A. I could not answer that.

Q. What is your best judgment?

A. I should think it was more than ten per cent.

Q. How much more would you think it was?

A. I do not think I am competent to decide that.

Q. These assignments of brands were all accompanied by the agreement of the Tin Plate Company not to raise the

prices of those branded products beyond the current market price, were they not?

A. That was the understanding in the contract.

Q. Was that understanding lived up to after the assignments were made?

A. That is a difficult question to answer.

Q. Were the prices of your branded products put up above the current market prices, whatever they were?

A. Well, our private brands were heavily coated plates, and when the ordinary plate was advanced, these were advanced considerably more, so it is a little difficult to get at just whether they were advanced as to the market cost.

Q. They were advanced at the same time, were they?

A. Not always.

Q. About the same time?

A. Generally about the same time.

Q. The coating on your plates was thicker than that of the ordinary plate, was it not?

A. Than the ordinary plate; yes, sir.

Q. It took more tin, did it not?

A. It took more lead and tin combined.

Q. It made a heavier mixture?

A. Some of the plates carried more coating than others.

Q. And can you tell us whether those increases in the prices were or were not preceded by a rise in the price of tin and lead in the open market?

A. That would be a pretty difficult question for me to answer. ,

Q. Tin went up very much in price in 1899 and 1900, did it not?

A. It went up and it went down; it varied.

By MR. LINDABURY:

Q. You do not mean it went down in that year?

A. Down at times and up at times.

Q. I mean in 1899?

A. There might have been a very little advance, but there is always a variation in tin; it a very uncertain quantity.

By MR. REED:

Q. It never has been as low since 1899 as it was in that year, has it?

A. I could not answer; I have not been closely enough in touch with the tin market.

Q. Did you ever hear of the Moon Flower brand?

A. Yes, sir.

Q. That was terne plate sold in competition with your brands, was it not?

A. Yes, sir.

Q. And it belonged to the American Tin Plate Company, did it not?

A. I think it did.

Q. And the same for the Star Flower brand?

A. I think it did, the same.

Q. It belonged to the American Tin Plate Company and was sold in competition with yours?

A. My impression is that it did.

Q. The same of the Jonquil brand?

A. I do not know the brand.

Q. Do you not know that brand?

A. I do not.

Q. Do you know the Crocus Brand?

A. I do not.

Q. Do you know of the Wild Flower Brand?

A. I do not.

Q. These assignments were made by you as late as October, 1907, were they not?

A. I cannot answer as to that date without looking at the assignment.

Q. Will you look at the assignment?

A. I do not carry those dates in mind.

By MR. DICKINSON:

Q. 1907 was the last one we noted.

A. There was one in 1907, I think.

By MR. REED:

Q. Here is one in July, 1907.

A. If that is 1907, it would be the last one. (Examining papers.) July 3, 1907.

Q. In October, 1907, Mr. McFarland, there was a great deal of competition in the manufacture of terne plate, was there not?

A. I think there was.

Q. At that time the American Sheet & Tin Plate Company did not manufacture more than 60 per cent of the terne plate of the United States, did it?

A. I could not answer that question.

Q. It did not manufacture more than 60 per cent of the tin plate and terne plate of the United States, did it?

A. I could not answer that question.

Q. There was very strong, general, aggressive competition?

A. There was.

Q. In 1899, when your first assignment was made, did you know the Whittaker plant to be in operation in Wheeling?

A. I could not answer.

Q. There was such a plant in Wheeling, was there?

A. I have heard of the name. I think they were in operation.

Q. Do you know whether or not they were manufacturing terne plate at that time?

A. It is my impression that they were not selling it at that time. I am not sure about that.

Q. You are not sure about that?

A. I am not sure of that point.

Q. Then your statement that the American Tin Plate Company was the only producer of tin plate at that time in the United States is to be qualified with the possible exception of the Whittaker Company?

A. You asked me to state positively that they were not. If they did it was in very small quantity.

Q. But you do not mean to be understood to say positively that the American Company was the only producer?

A. I could almost say positively.

Q. You could almost say so?

A. Yes.

Q. Then can you tell us that the Whittaker Company did not make it?

A. I could not tell you that.

MR. DICKINSON: Mr. Reed, of what year are you speaking?

MR. REED: 1899.

MR. DICKINSON: This first contract was in 1900.

By MR. REED:

Q. Apply the same to the year 1900, then, Mr. McFarland.

A. The conditions were about the same.

Q. Do you know that the Whittaker Company was not manufacturing terne plate in 1900?

A. I have only heard of that company, and I am not familiar with just what they were doing. Therefore, what I have stated is based on having no knowledge of the Whittaker Company.

Q. In your direct examination you stated that the American Tin Plate Company at that time was the only manufacturer which could produce satisfactory terne plate. Were there other manufacturers who were selling terne plate that was not satisfactory to you?

A. There was a dipper whom I had in mind at that time who did not manufacture from the steel all the way up. He would not be a satisfactory man to buy from, because you could not buy at a proper price. They really were not manufacturers. They were only partial manufacturers; they were dippers.

Q. When you speak of a manufacturer you mean a man who manufactures plates from tin bars?

A. I mean the man who manufactures the black plates.

By MR. LINDABURY:

Q. All the way from the bottom up?

A. Yes. However, he might not go all the way.

By MR. REED:

Q. Is black plate made from tin bars?

A. Certainly. They term tin plate bars steel bars.

Q. Then it was possible to buy terne plate and tin plate at that time from a number of dippers?

A. Not commercially so; no.

Q. Not at the prices you would have been required to pay?

A. No, sir; not, and stay in business.

Q. Do you know whether this practice of the assignment of brands originated with the jobbers or with the American Tin Plate Company? That is to say, whether the Tin Plate Company wanted to put it in force or if the jobbers asked to have it put in force.

A. It is my impression that the American Tin Plate Company would not make your brand unless you assigned it to them.

Q. They were perfectly willing to sell you their own brand without requiring any contract?

A. Oh, they would have sold you their own brands.

Q. They were not willing to manufacture for you in your name without being protected by this assignment of brand?

A. They were not.

Q. In 1909, the production of the American Sheet & Tin Plate Company was somewhat interfered with by labor troubles, was it not?

A. What year did you say?

Q. 1909.

A. I think that was the year.

Q. In that year did you get all of your terne plate from the American Sheet & Tin Plate Company?

A. There were times when we could not get it.

Q. Did you then go out and purchase from these competitors?

A. We were obliged to—in what year was that?

Q. 1909.

A. Yes, I think so; yes.

By MR. LINDABURY:

Q. Three years ago?

A. Yes.

By MR. REED:

Q. These assignments were not revoked in any way to prevent your purchasing from these competitors, were they?

A. Our understanding was that in case they were not able to supply us, that we could get our supply from outside.

Q. That was the understanding: was that understanding lived up to?

MR. DICKINSON: Does not the contract itself provide that?

THE WITNESS: I think the contract so states.

By MR. REED:

Q. There was no objection made?

A. There was no objection. We were obliged to buy some outside.

Q. Before I leave that subject, how many brands of terne plate have you?

A. I could not give you that.

Q. There were twenty-one different brands mentioned in these assignments. Had you that many?

A. We had more. We had some brands we never assigned.

Q. Coming now to this system of conditional credits, you were allowed credits of 5 cents per box in most cases, and of 10 cents per box in some cases, provided you bought 85 per cent. of your purchases of tin plate and terne plate from the American Company. Have I stated it correctly?

A. During the latter part of the arrangement; yes, you have stated it correctly.

Q. That was in force from 1904 until the practice was abandoned?

A. I am not sure of the year it was changed to the 85 per cent.

Q. This whole system of conditional credits stopped in the year 1908?

A. I mean when it first started it was 100 per cent.

Q. Then it was reduced to 90 per cent.?

A. Yes.

Q. Then it was reduced to 85 per cent. Is that correct?

A. It was reduced to 90. I do not know whether that covered the tin plate and the sheet iron productions or not.

Q. We are talking about tin plate now.

A. That is why I am not sure. My recollection did not make it clear whether the 90 per cent. was in vogue in both cases.

Q. Then for several years the figure was 85 per cent.?

A. Yes.

Q. And the whole system of conditional credits was abandoned or discontinued in 1908, was it not?

A. In 1908 the last purchases were made under that condition.

Q. The allowances were 5 cents per box in most cases, and 10 cents per box in some cases, were they not?

A. With us I think it was 10 cents a box in most cases.

Q. What percentage on the price of a box of tin plate would that amount to?

A. What percentage?

Q. Yes.

A. That would depend upon what the tin was selling at at that time.

Q. Tin plate, according to the figures already put in evidence by the Government, has sold during this time, from 1899 to 1908, at from \$3.30 a box to \$4.50 a box?

A. That is a matter of calculation. Whenever the prices would vary this percentage would vary.

Q. Perhaps you are quicker in mathematics, and will make the calculation?

A. Anybody can figure that.

Q. Will you do it, please?

A. What would be the price on which I am to figure it?

Q. Take the low price of \$3.30 and the high price of \$4.50.

MR. LINDABURY: Take one at a time.

A. What was that question as to the \$3.30? What basis was that, and what weight?

By MR. REED:

Q. Ten cents on \$3.30 would be three per cent.?

A. It would be.

Q. And 5 cents on \$4.50 is one per cent.?

A. About that.

Q. So that the range of discounts given to those buyers who bought 85 per cent. of their requirements from the American Tin Plate Company ranged from one to three per cent.?

A. That is about it.

Q. In the latter part of the period during which this system of conditional credits was applied there was, you have told us, strong competition from these new competitors. I am right in that, am I?

A. The Tin Plate Company could state that better than I could.

Q. You told Judge Dickinson that you were familiar with conditions in the tin plate industry during all this time.

A. What do you mean by "close competition" or "strong competition"? Do you mean that they were getting business?

Q. I mean that there were competitors who were successful in getting business?

A. There were.

Q. That is what you understand by competition, is it not?

A. Yes.

Q. Did this system of conditional credits operate, as far as you could tell, to prevent the competitors from getting business, or did the competitors meet the reduced price?

A. I think it prevented competitors from getting business.

Q. Did the competitors meet the reduced price, the net price?

A. They may have in some cases.

Q. Did they, with you?

A. I think they did in some cases.

Q. It meant a discount of from one to three per cent.?

A. In some cases we got lower prices from the competitors.

Q. Were the competitors generally willing to make that discount in order to get the business?

A. I think not.

Q. You think not?

A. Not generally; no, sir.

Q. Then the American Company got it by scaling its prices down as much as three per cent. in most cases, did it?

A. Yes; they held the business.

MR. REED: That is all.

RE-DIRECT EXAMINATION.

By MR. DICKINSON:

Q. It was some time, was it not, before these independents got started in full swing?

A. Oh, it took some time, sir.

Q. State whether or not in the meantime the operation of this plan had not succeeded in tying a large part of the trade to the American Tin Plate Company?

A. That would be a hard question for me to answer.

Q. You were asked, Mr. McFarland, about their making your brands, and also having brands of their own, and about the reputation of your brands accruing to you. If you had bought from any other maker, and forfeited your brands, then where would the reputation have gone?

MR. LINDABURY: I object to that as calling for speculation.

By MR. DICKINSON:

Q. I will ask you if you know. Do you not know where it would have gone?

A. It would have gone to the Tin Plate Company.

Q. Along with your brands, would it not?

A. Yes, sir.

Q. You were asked about dippers. Had these dippers been supplying jobbers like you?

A. I think not.

Q. You had not been getting your tin plate from them?

A. Never.

Q. And when the American Tin Plate Company was formed I understood you to say, as far as you know, they were the only people who could supply you?

A. When they were formed, we had some contracts with mills which were taken over.

Q. And for some time after that—?

A. (Interrupting). They supplied our brands through the contracts already in existence.

Q. How long before the independents became active and were real competitors of the American Tin Plate Company? How long was that after the formation of the company?

A. I do not think I could answer that question.

Q. Suppose after you assigned your brands you had bought from some other maker except the American Tin Plate Company, and your brands had been forfeited; what effect would that have had upon your business?

MR. LINDABURY: I object to that as calling for a speculation.

MR. DICKINSON: I am calling for his opinion as an expert in that business.

MR. LINDABURY: It is not an expert question—

MR. DICKINSON: I thought it was a pretty good question.

MR. LINDABURY: It is a question, I mean, not admitting of expert testimony.

MR. DICKINSON: I think there is expertism in various classes of business, and in trade as well as anything else.

By MR. DICKINSON:

Q. State what it would be.

A. We would have lost trade built up through that brand.

MR. LINDABURY: That is something rather obvious.

By MR. DICKINSON:

Q. You were asked whether or not at the time you bought outside, when they could not supply you, whether this contract insisted on a forfeiture, or, in substance that the contract only provided for forfeiture in case they could not supply you.

MR. LINDABURY: Objected to. It speaks for itself.

By MR. DICKINSON:

Q. That was your understanding?

A. I did not quite catch that.

Q. Under your agreement with them, did they have any right at any time when you bought outside to forfeit your brand?

MR. LINDABURY: Objected to. The contract speaks for itself.

A. I think not.

By MR. DICKINSON:

Q. Then there was no act of grace on their part, so far as that was concerned?

A. We lived up to the contract.

RECROSS-EXAMINATION,

By MR. REED:

Q. Did you ever hear of the firm of N. & G. Taylor, of Philadelphia?

A. Yes.

Q. They were manufacturers of high-grade roofing plates?

A. They were jobbers.

Q. In 1899 and 1900?

A. So-called manufacturers. They were jobbers at that time.

Q. Did you try to get your requirements from them?

A. We did not.

Q. Did you ask for any offers or prices from them?

A. We did not.

Q. Was there any secret made of this system of conditional credits, or was it generally known throughout the trade?

A. It became known through the trade.

Q. Everybody in the business knew it, did they not?

A. I do not know that everybody did. We did not give that information to anybody else.

Q. You found that competitors of the Tin Plate Company knew that, did you not?

A. They soon found out.

MR. REED: That is all.

MR. DICKINSON: That is all

These are the forms you furnished us. We will put them in as evidence at this time. I took the copies out; there is no use in putting them in.

(The papers referred to were marked "Government Exhibits Nos. 81 to 85, May 14, 1912," and will be found in the book of exhibits.)

HOWARD M. DAVIS,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

By MR. DICKINSON:

Q. Where do you live?

A. Philadelphia.

Q. How old are you, Mr. Davis?

A. Forty-nine.

Q. In what business are you now engaged?

A. I am sales manager of the Philadelphia District for the Phillips Sheet & Tin Plate Company.

Q. What does the Phillips Sheet & Tin Plate Company do?

A. It manufactures tin plate, terne plate, and black plate.

Q. How long has that concern been in business?

A. About seven years.

Q. How long have you been with that concern?

A. Three years.

Q. Prior to your connection with that concern in what were you engaged?

A. I was Philadelphia sales manager for the American Sheet & Tin Plate Company.

Q. How long were you sales manager for that company?

A. I think three years.

Q. Prior to that how were you engaged?

A. I was the Assistant General Manager of Sales for the same company.

Q. And prior to that what were you?

A. Prior to that I was what they called special agent; that is, claim agent for the American Sheet & Tin Plate Company.

Q. State whether or not, up to the time you left, about three years ago, you had been with the American Tin Plate Company from the time of its formation, in the various capacities mentioned?

A. Yes.

Q. Before you were with the American Tin Plate Company were you connected with any tin plate company, and if so what?

A. I was connected originally with the old American Tin Plate Company of Ellwood, Indiana.

Q. And that company went into the American Tin Plate Company, did it, at its organization?

A. Yes.

Q. How long had you been with the American Tin Plate Company of Ellwood?

A. About two or three years.

Q. You have stated that you became general manager of sales after the formation of the American Tin Plate Company of New Jersey?

A. No, sir.

Q. Assistant General Manager of Sales?

A. Yes, sir.

Q. And continued in that position until February, 1902?

A. No.

Q. Until when?

A. I continued in that position until, I think it was, 1906; and then I was transferred to Philadelphia.

Q. Who were the active parties in originating the American Tin Plate Company? Who were the men who were instrumental in bringing it together?

A. The American Tin Plate Company of New Jersey or the Ellwood Company.

Q. The Company of New Jersey?

A. According to my information—

MR. REED: One minute.

By MR. DICKINSON:

Q. I will withdraw that question and ask this. Did you, at or about the time of the formation of the American Tin Plate Company, come in contact with and have anything to do with those or any of those who were active in promoting the formation of that company?

A. If I do not know who were active in promoting the company I cannot answer the question.

Q. Do you know who were active?

A. I think I know.

Q. I will ask you later the grounds of your information. Just state whom you know, if you do, and why you state, if you know it?

A. There was D. G. Reid; Judge William H. Moore; F. S. Wheeler; James H. Moore (I think his name is James H. Moore; I know he is Judge Moore's brother); W. B. Leeds.

Q. During that time did you talk with any of these men about the formation of it, and if so, with whom?

A. No, sir.

Q. On what do you base your answer?

MR. LINDABURY: That he did not talk with them?

MR. DICKINSON: No; I mean on what does he base his answer that his information is that these men were instrumental and active in the formation of the Company?

THE WITNESS: Observation.

By MR. DICKINSON:

Q. On what kind of observation?

A. In addition to observation, it was generally understood that this consolidation was being brought about. And upon newspaper reports.

Q. Were you associated with Mr. Reid at all?

A. Yes, sir.

Q. With what company was he connected?

A. The American Tin Plate Company of Ellwood.

Q. You were connected with that company?

A. Yes, sir.

Q. Were you thrown with him at any time?

A. Yes, sir.

Q. Did you or did you not hear him talk about it?

A. He did not confide in me that he was organizing the company, but in a general way I understood that they were organizing the company.

Q. You had no conversation with any of these men about it?

A. I do not recall now, I can tell you now, that one of the officers of the American Tin Plate Company of Ellwood, Indiana told me.

MR. LINDABURY: Objected to as hearsay.

By MR. DICKINSON:

Q. Who was he?

A. John F. Hazen.

Q. Was he engaged in the formation of it?

A. I could not tell you.

MR. DICKINSON: I will not pursue that any further, then, because it appears to be entirely hearsay.

By MR. DICKINSON:

Q. In your connection with the Ellwood Company, and in pursuance of the duties which you had in connection with it, state whether or not you had any knowledge of the tin plate business at that time as it was carried on in the United States and of those manufacturers who were making and selling in the trade?

A. Yes; I did have knowledge.

Q. Do you know the companies that went into that organization?

A. I could not name them all now.

Q. Did you know the Aetna Standard Iron & Steel Company, of Bridgeport, Ohio?

A. Yes, sir.

Q. What were they making?

A. That was a consolidated company; they were making tin plates and sheets.

Q. What was your company, the American Sheet & Tin Plate Company, of Ellwood, making?

A. Tin plate and black plate.

Q. State whether or not these two companies were in competition in interstate commerce, so far as tin plate is concerned?

A. They were.

Q. Take the Atlanta Steel & Tin Plate Company, of Atlanta, Indiana. What were they making?

A. Tin plate.

Q. All these questions relate to the time of the formation of the American Tin Plate Company. State whether or not they were in competition with each other in interstate commerce.

A. It is my impression that the Atlanta concern had failed before the consolidation.

Q. Take the Beaver Tin Plate Company, of Lisbon, Ohio. What were they making?

A. Tin plate.

Q. Were they or not in competition with the Aetna Company and the American Tin Plate Company?

A. They were.

MR. LINDABURY: Did you not prove all this by Mr. Reid?

MR. DICKINSON: I want a better witness than Mr. Reid was, in my judgment. But we might save time, Mr. Lindabury, if you are willing to stipulate upon the record that these several companies stated here were active competitors at the time of the formation of the American Tin Plate Company, in interstate commerce, and outside of the State where their manufactories were located, were competitors of each other in the various products that they made, and that among the things they made was tin plate.

MR. LINDABURY: We could not do that as to all of them.

MR. DICKINSON: What exceptions would you want to make?

MR. LINDABURY: I could not tell offhand.

MR. DICKINSON: I will not pursue this subject any further if you will give me a memorandum later in regard to that.

MR. LINDABURY: If this witness can give it, it is perhaps just as well to go ahead with him.

MR. DICKINSON: Yes, we can go on with this witness.

By MR. DICKINSON:

Q. Take the Blairsville Rolling Mill and tin plate mill, Blairsville, Pennsylvania.

A. I do not know them.

Q. Take the Britton Rolling Mill Company, of Cleveland.

A. I do not know that.

Q. Take the Canonsburg Iron & Steel Company, of Canonsburg, Pennsylvania.

A. I do not think they made tin plate then.

Q. Take the Cincinnati Rolling Mill and Tin Plate Company of Cincinnati, Ohio.

A. I do not think they made tin plate.

Q. The Crescent Sheet & Tin Plate Company, of Cleveland.

A. They made tin plate.

Q. State whether or not they were competitors of the Aetna Company and of the American Tin Plate Company.

A. They were.

Q. And the other companies that you have mentioned, that you knew about making tin plate at that time; were they competitors in interstate trade?

A. They were.

Q. Look over this list, at page 11 of the petition, and state which of those companies you know to have been competitors with the others there in respect to tin plate or black plate or terne plate.

A. (Looking at list.) The Falcon Tin Plate & Sheet Company, of Niles, Ohio.

MR. LINDABURY: Which did you name first—the Falcon Company?

THE WITNESS: Yes. I commenced where Judge Dickinson left off. The last company he asked me about was the Crescent. The Falcon Tin Plate & Sheet Company, of Niles, Ohio; The Great Western Tin Plate Company, of Joliet; the Humbert Tin Plate Company, of Connellsville, Pennsylvania; the Irondale Steel & Iron Company, Middletown, Indiana; the LaBelle Iron Works, of Wheeling, West Virginia; the Laughlin Nail Company, of Martins Ferry, Ohio; Marshall Brothers & Company, Philadelphia, Pennsylvania; Monongahela Tin Plate Company, of Pittsburg, Pennsylvania; Morewood Company, Gas City, Indiana; Morton Tin Plate Company, Cambridge, Ohio; National Tin Plate Company, Monessen, Pennsylvania, and Anderson, Indiana; New Castle Sheet & Tin Plate Company, of New Castle, Pennsylvania; Pittsburg Tin Plate Works, New Kensington, Pennsylvania; Star Tin Plate Company, Pittsburg, Pennsylvania. United States

Iron & Tin Plate Company. It states here McKeesport, Pennsylvania. That should be Demler, Pennsylvania. The next is Wallace, Banfield & Company, Irondale, Ohio; Washington Sheet & Tin Plate Company——

Q. That should be Washington Steel & Tin Plate Mills, Washington, Pennsylvania?

A. I suppose that was the company then.

By MR. DICKINSON:

Q. That is all?

A. Yes.

Q. Of those that you named, you know what their products were, do you?

A. Principally tin plate.

Q. And that these were in competition with each other in interstate business at the time of the formation of the American Tin Plate Company?

A. Yes, sir.

Q. At the time of the formation of that company what proportion of the total output of tin plate in this country was controlled by them?

A. What proportion was controlled by the American Tin Plate Company?

Q. Yes; what proportion was controlled by the American Tin Plate Company?

A. My recollection is that it was about 95 per cent.

Q. Did you know anything of a company called the Wheeling Corrugating Company of Wheeling, West Virginia?

A. Yes, sir.

Q. Did that company come in under this combination?

A. No, sir.

Q. What was that company making?

A. I think they were dipping sheets that were made by the Whittaker Iron Company.

Q. Were they making tin plates for sale to the trade generally, to others?

A. Yes, sir.

Q. Tin plate?

A. Yes, sir.

Q. What kind of a concern was it? Was it a large or a small concern?

A. It was rather small. We considered it a small concern.

Q. Do you know the size of it, about?

A. At that time?

Q. Yes.

A. I think they were only dippers at that time.

Q. That is what I mean.

A. The Wheeling Corrugating Company.

Q. They were dippers at that time?

A. That is my recollection.

Q. Were they, at that time, making tin plates; rolling the plate?

A. The Whittaker Iron Company. I think, was rolling the plate for the Wheeling Corrugating Company. They were allied interests, and the Wheeling Corrugating Company were consuming that made by the Whittaker Company.

Q. Was the Whittaker Iron Company making tin plate which they were selling generally in the trade outside of the Wheeling Corrugating Company?

A. Not that I know of.

Q. If they were selling any, was it to a large or a small extent?

MR. LINDABURY: I object. If he does not know, how can he answer?

By MR. DICKINSON:

Q. Did you know them as competitors?

A. No, sir; I did not recognize them as competitors. They were more what you would call manufacturing jobbers.

Q. How about Lalance and Grosjean, of Harrisburg, and the St. Louis Stamping Company, of St. Louis?

A. They manufactured.

Q. What did they manufacture?

A. They manufactured black plate and tin plate.

Q. Who consumed their product?

A. They did.

Q. They consumed their own product?

A. Yes.

Q. Were they competitors of yours in the trade?

A. No, sir.

Q. What did they make? What did they put on the market?

A. They put on the market tinware; enamelled ware.

Q. Which they made out of the tin plate that they manufactured?

A. Yes, sir.

Q. How long after the formation of the American Tin Plate Company was it before the system of brand assignments began?

A. About three months.

Q. What percentage of the brands in the markets were acquired under this method of brand assignment by the Tin Plate Company?

MR. LINDABURY: Are you speaking of a particular time?

MR. DICKINSON: Yes.

MR. LINDABURY: Not of the whole period?

MR. DICKINSON: Beginning with three months after the formation of the American Tin Plate Company; not all at one time, but under this system which prevailed as long as it did prevail, while you were with the Company, Mr. Davis.

A. Without having access to the records of the company I should judge there were about 85 per cent of the brands assigned.

By MR. DICKINSON:

Q. Who were the owners of those brands, generally?

A. Jobbers throughout the country.

Q. And also operators of dipping plants owned some of them?

A. No.

Q. Jobbers generally throughout the country?

A. Yes.

Q. State whether or not this system of assignment of brands was confined to any particular territory or whether it prevailed generally throughout the country?

A. It prevailed generally.

Q. When was the system of allowing credits upon the basis of percentage of purchases inaugurated?

A. I think it was in 1902.

Q. And how long did that continue?

A. Until 1908.

Q. Do you know a concern called the American Can Company?

A. Yes, sir.

Q. State whether any of the officers or directors of the United States Steel Corporation, or of the American Tin Plate Company were also officers or directors of the American Can Company?

A. Why, I never attended a board meeting of the American Can Company, but I think I could name one or two who were directors in both companies.

Q. Who were they?

A. D. G. Reed and Judge Moore.

Q. State whether or not the American Tin Plate Company made any preferential contracts with the American Can Company, by which they got a lower price than other customers.

MR. LINDABURY: I object to that as irrelevant and not calling for the best information. If it was a contract in writing, that is the only proper evidence, if any evidence on that subject is proper.

By MR. DICKINSON:

Q. Do you know whether or not there were such contracts?

A. No; I do not.

Q. Did you ever see any such contracts?

A. I do not remember ever having seen them.

Q. State whether or not about the year 1907, Mr. Davis, there were meetings in Pittsburg of various representatives of manufacturers of tin plate and sheet steel, and whether or not you attended any of such meetings?

A. Yes, sir.

Q. Where did those meetings take place?

A. I am trying to think of the name of the hotel, Judge. I will tell you in a minute. It was in a hotel.

Q. A hotel in Pittsburg?

A. Yes; I cannot just recall the name of the hotel.

Q. Where there were meetings of the American Can Company?

tives of those making tin plate and those making sheet steel?

A. Yes, sir.

Q. Did you attend both classes of meetings?

A. Yes.

Q. How often did those meetings occur?

A. There was no stipulated time for the meetings; they occurred at various times.

Q. Were these luncheons or dinners or meetings?

A. They were just meetings.

Q. Meetings?

A. Informal meetings.

Q. Did you not have chairmen of those meetings?

A. Yes.

Q. Who was chairman of the meeting when the representatives of the tin plate makers came together?

A. My recollection is that Mr. E. T. Weir was Chairman of the Tin Plate meetings.

Q. And who was chairman of the meetings when the representatives of the sheet steel makers came together?

A. I think it was Mr. James Campbell, of Youngstown.

Q. With what company was he associated, if any?

A. Mr. Campbell?

Q. Yes.

A. Youngstown Sheet & Tube Company.

Q. And with what company was Mr. Weir associated, if any?

A. Phillips Sheet & Tin Plate Company.

Q. Those meetings began, did they, in 1907, or about that time?

A. I cannot recall just when they began.

Q. Were there meetings in 1907?

A. I think there were.

O. And you attended those meetings?

A. Yes, sir.

Q. Now, tell me who attended those meetings, and with what companies they were connected. Just give the names of those who attended the various meetings, and with what companies they were connected?

A. I cannot remember who were there, Mr. Dickinson.

Q. Can you not recall any of them?

A. I can recall possibly one or two, or two or three.

Q. Name those two or three, will you please.

A. The American Rolling Mill Company.

Q. Who represented that company?

A. I think a Mr. Horner. The La Belle Iron Works.

Q. Who represented that company?

A. Mr. Scott. The Inland Steel Company.

Q. Who represented that company?

A. Mr. Beatty and Mr. Jones.

Q. You attended both meetings, and you were connected with the American Sheet Steel and the American Tin Plate Companies, were you?

A. Yes, sir.

Q. Now tell us, Mr. Davis, just what transpired at those meetings?

A. They were just informal meetings.

Q. State whether or not you discussed prices?

A. Yes, sir; we discussed prices.

Q. What was said about prices, and in what manner did you discuss them?

A. Why, we would discuss whether we ought to decline prices on account of conditions prevailing throughout the country, or whether prices should be advanced a little, for the same reason.

A. After you had finished your discussion, then what would take place?

A. After every man gave his idea as to whether conditions warranted an advancement or decline of prices, somebody would say, "I am going to decline my prices \$2 a ton." Somebody else would say, "I think I will decline my prices \$3 a ton." Somebody else would say, "I do not think I will change my prices at all."

Q. Then would they continue the discussion?

A. Yes; they would continue it.

Q. State whether or not, before they left the meeting there was not a general understanding as to whether the price would be advanced or whether it would be lowered?

A. Usually.

Q. Did they leave with that understanding or not?

A. Well, there would be no agreement.

Q. I understand there would be no agreement. You did not bind yourselves together by an agreement, you say?

A. No, sir.

Q. But did you have an understanding that that would be the price?

A. Well, each man would say for himself that he was going to make that price for his company.

Q. And they would all say the same price, then?

A. Practically.

Q. And would you leave with the understanding that that would be the price?

A. Well, if I would leave the meeting saying that was going to be our price we would stick to it usually.

Q. Did you expect the others to do the same thing?

A. We would expect them to, but they did not.

Q. Suppose it transpired, or came to the knowledge of some of the others that someone who had announced his price did not stick to it, what, if anything, was done about it?

A. Well, we would investigate it.

Q. You would investigate it?

A. And see what he had done. But he usually had made a mistake.

Q. That is to say, he would say he had made a mistake?

A. Yes, sir.

Q. So when a man announced a price at which you understood from him he was going to sell, and you found out that he had sold at a lower price, you investigated him, did you?

A. Yes, sir.

Q. State whether or not you would bring it to the attention of the Chairman?

A. Usually.

Q. Then what would happen?

A. Why, he would be asked whether or not he had cut the price.

Q. Would you get together again?

A. Occasionally. Usually after that, yes.

Q. Usually after that you would get together?

A. Yes.

Q. After somebody had complained to the Chairman?

A. Yes, sir.

Q. And then this man would be asked about it?

A. Yes.

Q. What would you do then?

A. One of us would say, "If you are going to cut the price so much, and going to demoralize the market, we will just have to demoralize the market and cut our prices."

Q. What would usually happen before you would leave?

A. Usually this man would say his salesman had made an error and he did not intend to cut the price.

Q. Would he or would he not indicate better conduct in the future?

A. Yes.

Q. Then would you or would you not leave with the understanding that you were going to uphold those prices?

A. Yes, sir.

Q. And that process would go on, would it, from time to time?

A. Yes.

Q. I asked you especially in respect to tin plate. State whether or not the same method prevailed and the same course in respect to the sheet steel?

A. I gave you the names of the people who were present at the sheet meetings, not the Tin Plate meetings.

Q. Just reverse the question. State whether or not the same methods prevailed, and the same course, in respect of tin plate as in respect of sheet steel?

A. Usually practically the same thing.

Q. Who appointed Mr. Campbell chairman; do you know?

A. No, sir.

Q. Do you know whether or not Mr. Campbell was one of the gentlemen who attended the Gary dinners?

MR. LINDABURY: I object. Did you attend the Gary dinners?

THE WITNESS: No, sir.

MR. LINDABURY: What is the object of this?

MR. DICKINSON: I hardly think I am called upon to state.

MR. LINDABURY: I think counsel had better state, if there is a legitimate object. I cannot discover it.

By MR. DICKINSON :

Q. I ask you whether Mr. Campbell was appointed Chairman by Judge Gary?

A. I do not know, sir.

Q. You do not know?

A. No, sir.

Q. If he appointed him you were not there?

A. No, sir.

Q. Did your association appoint him?

A. We had no association.

Q. Your meeting?

A. Mr. Campbell would usually call us all together.

Q. He assumed the office of Chairman, did he?

A. Yes, sir.

Q. And you all acquiesced in it?

A. Yes.

Q. And you do not know the source of his authority?

A. No, sir.

Q. It was recognized, however, was it?

A. Yes.

Q. Who appointed Mr. Weir as Chairman?

A. Mr. Campbell.

Q. When were these meetings held in point of time, with reference to the Gary dinners?

MR. LINDABURY: I object. The witness was not at the Gary dinners, and knows nothing about that.

By MR. DICKINSON :

Q. You have heard of the Gary dinners, have you not?

A. I have read of them.

Q. Read of them in the papers?

A. Yes, sir.

Q. As matters of general notoriety?

A. As a matter of news.

Q. State when these meetings that you referred to in Pittsburg took place with reference to the time of those Gary dinners as a matter of news?

MR. LINDABURY: I object, as calling for hearsay.

MR. DICKINSON: We will prove it afterwards.

MR. LINDABURY: Suppose you do, and prove it in a legal way.

By MR. DICKINSON:

Q. Answer the question.

A. Shall I answer it?

Q. Yes.

A. I do not know, Mr. Dickinson.

Q. Did or did not these meetings take place closely following the times that you, as a matter of current news, learned through the prints that the Gary dinners had taken place?

MR. LINDABURY: I object to that as irrelevant, incompetent and improper, leading and suggestive, not for the benefit of the record, but some other purpose.

Q. What is your answer?

A. I think our meetings did occur after those dinners.

Q. Generally or not?

A. Well, I cannot tell you that. I do not know whether they were generally held after the dinners or not, but my impression is that some of our meetings were held after those dinners.

Q. Shortly after them or not?

A. Within about a week or ten days.

MR. DICKINSON: That is all.

CROSS-EXAMINATION,

By MR. REED:

Q. Mr. Davis, at the time the American Tin Plate Company was formed, the Canonsburg Iron & Steel Company had hot mills, had they not?

A. Yes.

Q. In operation?

A. Yes, sir.

Q. The Griffiths Charcoal Iron Mills had hot mills in operation?

A. I think so.

Q. The National Enamelling & Stamping Company had, likewise, had it?

A. I think not; I think that company had not been formed at that time.

Q. You think that had not been formed when the American Tin Plate Company was organized?

A. My recollection is that it had not.

Q. Was it not doing business at that time under the name of the St. Louis Stamping Company?

A. Not the National Enameling & Stamping Company.

Q. There was a concern called the St. Louis Stamping Company, was there not?

A. Yes.

Q. Which then operated tin mills?

A. Yes.

Q. And its name was afterwards changed to National Enameling & Stamping Company?

A. Yes, sir.

Q. Was the Parkersburg Iron & Steel Company operating tin mills during December, 1898?

A. Mr. Reed, you draw the line between tin mills and sheet mills. You spoke of hot rolls and hot mills. There is a difference.

Q. I understand hot mills are used for the production of both sheet steel and black plate, is that right?

A. No; not altogether. A lot of sheet mills cannot make black plate for tinning. They can make black sheets for galvanizing, but they cannot make black plate for tinning.

Q. The black plate is made on what are called tin mills, is that correct?

A. For tinning.

Q. Now, where does the raw material come from before it goes into the tin mills? Does it go through what are known as the hot mills?

A. No.

Q. I am a little mixed on this and I want you to explain it.

A. The hot mills, Mr. Reed, are the same in a sheet mill and a tin mill, but the rolls are somewhat different.

Q. I want to have this perfectly clear, Mr. Davis, and

suppose we start with the list of these companies again, and you tell me whether they operated tin mills or not.

A. To make sheets for tinning?

Q. To make black plate for tinning. Canonsburg Iron & Steel Company?

A. I think not.

Q. Did they have sheet mills working at that time?

A. They had.

Q. The Griffiths Charcoal Iron Mill?

A. They made charcoal iron. They made their own tin plate.

Q. At Washington, Pennsylvania?

A. I believe that is where they are.

Q. The Lalance and Grosjean Manufacturing Company at Harrisburg you have testified to in direct examination?

A. Yes, sir.

Q. The St. Louis Stamping Company; did they have tin mills?

A. Yes, sir.

Q. Running in December, 1898?

A. According to my recollection.

MR. CORNEAU: They also were a concern about which you testified on direct examination, were they not?

THE WITNESS: Yes sir.

By MR. REED:

Q. The Parkersburg Iron & Steel Company?

A. I do not think they made any black plate for tinning: I do not think they did.

Q. Did they dip any plate?

A. I think not; they never made any plate.

Q. The N. & G. Taylor Company?

A. They were dippers.

Q. Did they have tin mills?

A. No, sir.

Q. The Alcania Company, at Avonmore?

A. They made tin plate.

Q. Had they their own tin mills?

A. Yes, sir.

Q. Operating at that time?

A. I think they were.

Q. The Washington Tin Plate Company?

A. The Washington Tin Plate Company, yes; they made tin plate.

Q. Had they their own tin mills operating in December, 1898?

A. I think they had. They are operating now.

Q. The Whittaker Glessner Company you testified about in direct examination?

A. Yes, sir.

Q. The Wheeling Corrugating Company took the black plates that were produced by the Whittaker-Glessner Company and dipped them, did it not, at that time?

A. That is my recollection.

Q. So that the two affiliated concerns together produced tin plates from the bars and the finished product?

A. That is right.

Q. They were both located at Wheeling?

A. Yes, sir.

Q. Now, Mr. Davis, since the organization of the American Tin Plate Company has the percentage of the business which it controlled and which its successor, the American Sheet & Tin Plate Company, controls, shrunk to any extent?

A. Very materially.

MR. DICKINSON: Excuse me. Do you mean the business or the proportion? Which do you mean?

MR. REED: I mean the proportion of the total business of the country. I am going to ask him about that.

THE WITNESS: You asked me if the percentage of business we controlled had shrunk to any extent as compared with the percentage of production—

By MR. REED:

Q. To put it in another way: Has its percentage of the country's output, or the percentage of the country's capacity which is controlled, decreased since the company was organized, in December, 1898?

MR. DICKINSON: You are really asking two questions.

MR. REED: I know I am, and I am going to separate them with the next question.

A. The percentage has decreased very materially.

By MR. REED:

Q. Is that true both as to capacity and output?

A. I do not think the capacity has decreased any.

Q. I did not ask you that. Is that true both as to their proportion of the country's capacity and their proportion of the country's output?

A. I am afraid I do not get that.

Q. Has their percentage of the total tin plate productive capacity in the United States decreased since December, 1898?

A. Yes, it has decreased.

Q. Has their percentage of the annual output of the country also decreased since 1898?

A. Is not that the same question?

Q. No; one refers to capacity and the other to output.

A. I do not know whether their capacity has decreased or not.

Q. I did not ask you that.

A. I am trying to find out what you did ask me.

Q. I asked you as to their proportion of the total capacity of the country and you have told me that that decreased.

A. That did decrease.

Q. Now I am asking you about their proportion of the total output of the country.

A. Is not that the same thing?

Q. Not necessarily. I may have capacity to produce a thousand tons of tin plate and actually not produce any.

A. I do not know what their output is. I do not know whether they have decreased or increased their output.

Q. I did not ask you whether they decreased their output, but whether their percentage of the country's output annually had decreased; and you say you do not know.

A. No, I do not know.

MR. LINDABURY: I think he does know.

THE WITNESS: If you will put it to me so I can understand it better. I may know. I cannot get the question. What I

meant is that they do not control within a considerable percentage of what they did control. That is what I mean.

By MR. REED:

Q. Do you know the American Rolling Mill Company of Zanesville, Ohio?

A. Middleton, Ohio.

Q. Zanesville was the address I had.

A. I know the American Rolling Mill Company in Middleton, Ohio.

Q. Have they also a plant at Zanesville?

A. I do not know.

Q. At the present time do they manufacture tin plate?

A. I think they are now manufacturing terne plate.

Q. Does the Brier Hill Steel Company of Youngstown now manufacture tin plate?

A. No, sir.

Q. Does it manufacture terne plate?

A. No, sir.

Q. Does it manufacture black plate?

A. Not for tinning.

Q. What does it manufacture?

A. Galvanized and black sheets, and roofing products.

Q. Do they manufacture black plate which could be tinned by one of these dipping plants?

A. No, sir; they have no dipping facilities.

Q. Do you know the Carnahan Sheet & Tin Plate Company of Canton, Ohio?

A. I know of them.

Q. Do they manufacture tin plate?

A. Yes, sir.

MR. DICKINSON: As of what time are you asking?

MR. REED: I am putting it in the present. I say "Do they manufacture tin plate?" and I mean at the present time.

By MR. REED:

Q. Do you know the De Forest Sheet & Tin Plate Company of Niles, Ohio?

A. I have heard of them.

Q. Do they now manufacture tin plate?

A. I think not.

Q. What do they manufacture?

A. I think they manufacture sheets. I do not know.

Q. Do you know the Follansbee Brothers Company, of Follansbee, West Virginia?

A. I know them.

Q. Do they now manufacture tin plate?

A. Yes, sir.

Q. Do you know the Griffiths Charcoal Iron Mills, and do you know whether they are still in business in Washington?

A. Yes, sir.

Q. Are they still manufacturing tin plate?

A. Yes, sir; terne plate.

Q. And terne plate?

A. Only terne plate.

Q. Do you know whether the Inland Steel Company of Indiana Harbor are now manufacturing tin plate?

A. I think not.

Q. Is it now manufacturing terne plate?

A. I think not.

Q. Is it now manufacturing sheet steel?

A. Yes, sir.

Q. Do you know the Western Sheet & Tin Plate Company of Greencastle, Indiana?

A. I do not think they are in business.

Q. Let us go back to the Inland Steel Company again. Does it now manufacture black plate for tinning?

A. I think not.

Q. Is it not true that they have tin mills there?

A. If they have, I do not know it.

Q. Do you know the Jobe Iron & Steel Company of Ashland?

A. I have heard of them.

Q. Do they now make tin plate?

A. I do not know, sir.

Q. Does the Jones & Laughlin Steel Company of Pittsburgh now make tin plate?

A. Yes, sir.

Q. On a very large scale?

A. Yes, on a large scale.

Q. How many mills have they?

A. I think they have 24.

Q. Do you know The Massillion Rolling Mill Company?

A. I have heard of them.

Q. Do they now make tin plate?

A. I think not.

Q. What do they make?

A. I think they make sheets; galvanized and black sheets.

Q. Do they make a plate?

A. For tinning—I do not think they do.

Q. Do you know the McKeesport Tin Plate Company?

A. They make tin plate.

Q. At the present time?

A. Yes, sir.

Q. On a large scale?

A. Yes.

Q. How many mills have they?

A. I think they have 22 mills.

Q. And it is a successful company, is it not?

A. Very.

By MR. LINDABURY:

Q. Is that mill a unit in the manufacture of this product?

A. Yes, sir.

By MR. REED:

Q. Do you know whether the National Enameling & Stamping Company of Granite City, Illinois, is now manufacturing tin plate?

A. Yes, sir.

Q. How many mills have they?

A. I do not know. I think they have 20. I am not sure.

It may be more.

Q. It is very successful, is it not?

A. So far as I know.

MR. DICKINSON: Mr. Reed, I do not want to interrupt you. but I will agree to do this: If you will have a statement made

up of these mills, as of the time this bill was filed, with the different products and their capacity, I will have it checked over and agree to let it go in.

MR. REED: I am very nearly through, Judge, and perhaps I had better finish in this way.

By MR. REED:

Q. The Newport Rolling Mill Company, of Newport, Kentucky, is now making tin plate, is it not?

A. Not that I know of.

Q. Is it making black plate?

A. I think not.

Q. Is it making sheets?

A. I think so.

Q. How about the Osterberg Tin Plate Company?

A. My recollection is that they make tin plate.

Q. At the present time?

A. Yes, sir.

Q. Take the North American Steel Company.

A. I have never heard of it.

Q. At Belington, West Virginia.

A. Oh, yes, I have heard of it. It is an abandoned mill.

Q. It is not running now?

A. No.

Q. Is the Parkersburg Iron & Steel Company still in business?

A. Yes. They do not make tin plate.

Q. Do they make black plate for tinning?

A. I do not think they do,

Q. The Phillips Sheet & Tin Plate Company is your own concern?

A. Yes, sir.

Q. How many mills have you in your plant?

A. We have three plants.

Q. How many mills in the three plants?

A. Four.

Q. Is that a reasonably successful concern?

A. Reasonably so.

By MR. LINDABURY:

Q. Is it as successful as you would like?

A. Certainly not.

By MR. REED:

Q. Is the Standard Tin Plate Company of Canonsburg, now making tin plate?

A. Yes, sir.

Q. Is the N. & G. Taylor Company still making tin plate?

A. They are making tin plate.

Q. And terne plate?

A. Yes, sir.

Q. Successfully?

A. I do not know, sir.

Q. Is The Alcania Company of Avonmore still making tin plate?

A. I do not know whether they are running or not.

Q. How about the Union Sheet & Tin Plate Company of Marietta?

A. I think they are not running.

Q. The Washington Tin Plate Company is still running is it not?

A. Yes, sir.

Q. Is the Whittaker-Glessner Company still running?

A. I think so.

Q. And the Wilke Rolling Mill Company at Sharon—is that making it at the present time?

A. Not tin plate.

Q. Do you know the Ferguson Tin Plate Company?

A. I think they are dippers.

Q. Are they located at Pittsburg?

A. Yes.

Q. Do you know the Merchant & Evans Company at Philadelphia?

A. They are dippers.

Q. How about Meurer Brothers of Brooklyn?

A. They are dippers.

MR. DICKINSON: I enter a general exception to all the testimony as to these manufacturers making tin plate and various products as of the present time, unless it be shown that they were making them when the petition was filed, October 26,

1911. I think it is incompetent and irrelevant to prove anything that may have intervened between that period and this time.

MR. LINDABURY: An injunction case is tried as of the time of the trial; it deals with a situation existing not at the beginning of the suit, but as of the time of the trial.

MR. REED: It may have a bearing on the question of costs.

MR. DICKINSON: I enter the exception.

By MR. REED:

Q. If, in the list of companies that I have just gone over with you, there are any that have started to make tin plate or terne plate or sheet steel since the 26th of October, 1911, I wish you would specify which one has commenced in that way.

A. I know of but one that I can recall. That is the Washington Tin Plate Company?

Q. On the 26th of October, 1911, was the Washington Tin Plate Company manufacturing anything? Had it begun to manufacture anything?

A. In October?

Q. The 26th of October?

A. 1911—the Washington Tin Plate Company was down.

Q. Was it down temporarily?

A. It had been down for about a year.

Q. It has started up since then?

A. It has started up since then.

Q. Prior to that shut-down, had it been engaged in the manufacture of tin plate?

A. Yes.

Q. Are there any of these concerns which I have mentioned to you which have made tin plate for the first time since the 26th of October, 1911?

A. Yes, I think the American Rolling Mill Company is one.

Q. Had it manufactured tin plate before that?

A. I think it had not manufactured tin plate before October.

Q. Had it manufactured terne plate before October?

A. No, I think not. Now, I am not sure of that, Mr. Reed. I think not.

Q. With that exception, is there any one of these companies on the list I have just gone over with you which was not in business and manufacturing terne plate and sheet steel as you have described it, prior to the 26th of October, 1911?

A. The American Rolling Mill is the only one I see that was not manufacturing before that date.

Q. Then your testimony as to the business of these companies at the present time, with the exception of the American Rolling Mill Company, was true as of the 26th of October, 1911?

A. So far as I know.

(Whereupon, at 12:32 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

TESTIMONY OF HOWARD M. DAVIS, CONTINUED.

CROSS-EXAMINATION CONTINUED,

By MR. REED:

Q. You were asked this morning about this matter of assignment of brands by jobbers to the American Tin Plate Company. Did the American Tin Plate Company, or its successor, the Sheet & Tin Plate Company, have any brands of its own?

A. A great many.

Q. About how many?

A. I should say from 100 to 150.

Q. Were those brands materially of the same sort as those which were made for jobbers under the jobbers' brands?

A. Yes, sir.

Q. Then, in a sense, the company's brands were in competition with the jobbers' brands?

A. Exactly.

Q. What was the reason for requiring the assignments of these brands by the jobbers?

A. I suppose there were two reasons.

Q. What were they?

A. One was to retain the trade of the jobber, and the other was to protect their own brands.

Q. The good will that was attached to any jobber's brand, of course, belonged to the brand itself. That is correct, is it not?

A. Yes, sir.

Q. I want to come now to these meetings that you say were held in 1907 and for some time after that, by the different makers of tin plate.

A. I cannot remember the dates of those meetings, whether it was 1907 or 1908; I do not know.

Q. How long is it, Mr. Davis, since those meetings were discontinued?

A. I do not know that.

Q. About how long is it since the last meeting that you know about?

A. About eighteen months.

Q. You do not know of any such meeting having been held within the last eighteen months?

A. I say about eighteen months. It may have been a little longer than that, or it may have been a month or two since then.

Q. Is it a fact that the lowest bidder usually makes the market price of any commodity, such as yours, any standard commodity?

A. He would have the market, if he had the same reputation for filling his orders as his competitor.

Q. Take your particular business, the manufacture of tin plate. You dealt in standard products, did you not?

A. Are you speaking about the American Tin Plate Company now?

Q. I am speaking of the American Tin Plate Company.

A. Yes, sir.

Q. It manufactured standard styles of tin plate?

A. Yes.

Q. There were a number of other manufacturers in 1907,

1908 and 1909 who manufactured the same kinds of tin plate, were there not?

A. Yes, sir.

Q. And all those other manufacturers have a good reputation for quality of product and promptness of delivery?

A. Most of them.

Q. As to those whose reputaton was good, as good as that of the Tin Plate Company——

MR. DICKINSON: Excuse me. What year are you speaking of?

MR. REED: I am speaking of the period during which these meetings were held.

By MR. REED:

Q. As to those whose reputation was as good as that of the Tin Plate Company, it was a fact, was it not, that the lowest price quoted by any one of those manufacturers made a market practically for the others?

A. Well, in a sense it made the market. The other manufacturers would have to meet that price.

Q. That is what I mean.

A. They would have to meet that price to get the business.

Q. But any one of those, we will call them standard manufactures, could compel or force a reduction in the market price of those standard commodities by reducing his own price, because all of the others would have to meet his quotations. Is that correct?

A. That is correct in one sense.

Q. In what sense is it not correct?

A. Some manufacturer could reduce the price, or perhaps all the manufacturers in a certain territory, being located in such a place as to give them a freight advantage.

Q. The reduction in price by a manufacturer located in Pittsburg, for instance, would tend to reduce the price of almost all these companies, would it not?

A. Yes, sir.

Q. At these meetings, you have testified that there was no agreement as to price. Was there any obligation assumed by

the manufacturers who attended those meetings to maintain a particular price for a particular time after the meetings?

A. No, sir.

Q. Was it customary for them to declare their intention at the time about the prices that they would charge for their products?

A. They did declare the prices that they would charge. Now, Mr. Reed, please let me make this clear.

Q. Yes, sir.

A. I said there was no general agreement among the manufacturers as to prices, but each manufacturer would say for himself and for his own company what he expected to charge for his product.

Q. In case the price was not established and the information not given out in that way, how would you find out the price that your competitor was charging?

A. We would find out from the buyer and from our different sales representatives.

Q. Then the effect of these meetings was to give that information in an open and aboveboard way, which otherwise you would be compelled to get from the salesmen and the purchasers of tin plate?

A. Yes, sir.

Q. Or get it secondhand in some way?

A. Yes.

Q. Was anything else discussed at those meetings except prices?

A. General conditions.

Q. Trade conditions, you mean?

A. General trade conditions.

Q. Cost of materials?

A. Yes, cost of materials.

Q. And matters of that kind. In the petition filed in this case by the Government we find the following statement:

“It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amounts to an agreement or combination in restraint of trade.”

I wish you would tell us whether, at these meetings you speak of, anything more than assembling and mutual ex-

changing of information and declaration of purpose was done?

A. Not that I know of.

Q. Not at any meeting at which you were present?

A. No, sir.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. You have stated that the effect of assigning these brands, or one of the effects, was to retain the trade of the jobber. Explain how that operated.

A. It gave our company the exclusive right to manufacture those brands for those jobbers who assigned them to the company—the exclusive right.

Q. Did it not go further? If that company bought from anybody else, did it not give you the brand too?

A. Yes, sir.

Q. You were asked whether or not the lowest price would fix the price for others at these meetings to which you have referred, where you speak of announcing prices. Did they always leave with the understanding that the lowest price that had been named at that meeting would be the price they were going to sell at?

A. When they would leave the meeting each man for himself, for his own company, had stated that his price would be so and so, and that price conformed to the statements made by the other representatives present. The fact is that when the meeting would break up each man had stated that his price would be the same as the other man's.

Q. So they would all reach the same price before they broke up?

A. Without agreement?

Q. Yes, without an agreement. I understand you did not make any agreement. But, as a matter of fact, you interchanged and announced until you got to a point where each man, when he left, understood that all the others were going to sell at the same price?

A. That is very true.

Q. That was true, was it? That price was not necessarily

the lowest price that some one had named at the meeting, was it?

A. No, sir.

Q. There was a uniformity of conclusion as to the price, was there not, before you left?

A. Yes, sir.

Q. And you relied, each on the other, to sell at that price?

A. We did.

Q. And conducted your business on the faith of that?

A. Yes, sir.

Q. When one sold below the price and you found it out, you would take steps to have another meeting and inquire into it?

A. Yes, sir.

WILLIAM E. REIS,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

By MR. DICKINSON:

Q. Mr. Reis, what is your age?

A. Sixty-two.

Q. Where do you live?

A. Greenwich, Connecticut.

Q. What is your present business?

A. I am not in any active business.

Q. Are you connected with any firm at all?

A. Special partner in a brokerage house, only.

Q. What is the name of that house?

A. Raymond Pynchon & Company.

Q. Where are they located?

A. 111 Broadway.

Q. New York?

A. New York.

Q. Are you a stockholder in the United States Steel Corporation?

A. Yes, sir.

Q. You have not talked with the Government counsel as to what your testimony would be in this case, have you?

A. No, sir.

Q. You have declined to give them information, have you not?

A. I have not given anybody any information.

Q. I say, you have declined to give the Government's counsel any information, have you not?

A. Yes, sir.

Q. Mr. Reis, were you formerly connected with the National Steel Company?

A. Yes, sir.

Q. Before that did you have any connection with any manufacture of steel or iron?

A. Yes, sir.

Q. What company?

A. Shenango Valley Steel Company.

Q. Did the Shenango Steel Company go into the National Steel Company?

A. It did.

Q. How long had you been connected with the Shenango Valley Steel Company?

A. I started it.

Q. About what time was that?

A. I had been in the business that that grew out of since 1869.

Q. You were well acquainted, then, with that business and others who were in like business, were you not, in the United States?

A. Generally; yes, sir.

Q. You were generally familiar with those concerns who were making articles similar to those that the Shenango Valley Steel Company was making?

A. Yes, sir.

Q. Were you one of the active organizers of the National Steel Company?

A. I was not.

Q. Had you anything to do with any of the preliminary conferences leading up to it?

A. I had not.

Q. Did you represent your company in the formation?

A. I did.

Q. You knew by what company it was going to be taken over, did you not?

A. No, I did not.

Q. The National Steel Company?

A. Not at the conference in regard to our own company.

Q. Before you transferred, you knew, did you not?

A. Before I went in, yes, sir.

Q. You knew what the company would be?

A. Yes, sir.

Q. Did you know what the capital stock would be?

A. I did not know then; no sir.

Q. What did your company or your stockholders get in payment for their stock, or property of the Shenango Valley Steel Company?

A. They got stock of the National Steel Company.

Q. They got stock of the National Steel Company, you say?

A. Yes, sir.

Q. Before you finally agreed to sell you knew how much stock you were going to get, did you not?

A. My option was for cash or part cash or all stock or part stock.

Q. Before you concluded the matter and made the transfer you knew that you were going to get part stock in the National Steel Company, did you not?

A. All stock is what we decided to take.

Q. You knew what the amount of that capital stock would be did you not?

A. Yes, sir.

Q. You knew what companies were going to be taken over by it?

A. Yes, sir.

Q. Then before you did make a transfer of your company you did know about the organization of the National Steel Company, and the amount of its capital stock, and what the constituent companies were to be?

A. I did; yes, sir.

Q. Mr. Reis, at the time of the organization of the National Steel Company, which was in February, 1899, what

was the Ohio Steel Company, of Youngstown, which went into the organization, making?

A. Billets and sheet bars, principally; slabs.

Q. Tin plate bars, also?

A. Yes, sir; sheet and tin plate bars.

Q. Was it making any steel rails?

A. No, sir.

Q. Are you confident that they were not making steel rails?

A. Yes sir.

Q. Was that a large or a small concern, the Ohio Steel Company?

A. Large.

Q. Where did your company market its product before this organization, or just at about the time of this organization?

A. I do not know the extent of their market; around through Pennsylvania and Ohio in the iron and steel district.

Q. In Pennsylvania and Ohio?

A. Yes, sir.

Q. Where was the Shenango Valley Steel Company located.

A. Newcastle, Pennsylvania.

Q. Where did you market your products?

A. In a similar district.

Q. Did you come into competition with the Ohio Steel Company?

A. We certainly did.

Q. Outside of the State of Pennsylvania did you come in competition with them in the sale of your products?

A. They were located in Ohio.

Q. I know, but did you come in competition with them outside of the State of Pennsylvania?

A. Yes, sir.

Q. And also outside of Ohio?

A. I think so.

Q. Now, the Buhl Company. That was located at Sharon, Pennsylvania, was it?

A. Yes, sir.

Q. The Buhl Company made blooms, slabs, sheets and tin plate bars and billets, did it not?

A. Yes, sir. I would not be sure about the tin plate bars. They made billets.

Q. But the other articles you are sure about?

A. Yes, sir.

Q. State whether or not that was in competition outside of the State of Pennsylvania in interstate commerce with the Ohio Steel Company and the Shenango Valley Steel Company?

A. We did not run against them as much as the other.

Q. But you ran against them somewhat?

A. They were a very small concern.

Q. The Sharon Iron & Steel Company; where was that located?

A. Sharon, Pennsylvania.

Q. What did that company make, if you know?

A. They were a finishing mill. They were not a steel plant at all.

Q. Did they make bars?

A. Merchant bars.

Q. Bands and hoops?

A. Yes.

Q. Did they make any light rails, or do you know?

A. I could not say.

Q. Did they make sheet iron and steel?

A. I think they made sheet iron and sheet steel.

Q. Where did they sell their products, generally?

A. I could not tell you.

Q. You do not know?

A. No, sir.

Q. The King, Gilbert & Warner Company, of Columbia, Ohio. What did they make?

A. Billets and bars.

Q. And slabs?

A. Slabs.

Q. Were they in competition with these other companies which you have mentioned in interstate commerce.

A. Except the Sharon.

Q. The Bellaire Steel Company. State whether they came in competition with these other companies you have mentioned, except the Sharon?

A. They did.

Q. And were in competition with them in interstate commerce.

A. They were.

Q. Do you know anything about the Mingo Works of the Aetna Iron & Steel Company?

A. They were a Bessemer steel plant making a similar product billets and bars and slabs.

Q. Were they, or not, in competition with those other companies you have mentioned except the Sharon?

A. They were.

Q. Outside of the State of Ohio, where they were located?

A. Yes, sir.

Q. Mr. Reis, state whether or not, after the formation of the National Steel Company, it came in competition with the Federal Steel Company in interstate commerce.

A. To a small extent, I would think so.

Q. In what articles?

A. In billets.

Q. The Federal Steel Company was a large company, was it not?

A. A large company?

Q. Yes.

A. We did not think it was very much larger.

Q. What articles or products did you make that the Federal Steel Company made?

A. I think four-inch billets represented about the only competition we had with them.

Q. But you did have competition with them in interstate commerce on four-inch billets?

A. I think so.

Q. How about the Carnegie Steel Company?

A. The same would apply to them.

Q. What did the Carnegie Steel Company make?

A. An indefinite variety of stuff. I could not tell you.

Q. What did they make that you made?

A. Four-inch billets.

Q. Is that all?

A. And sheet bars. I am not certain about the sheet bars

By MR. SEVERANCE:

Q. That leaves only four-inch billets, as far as you know?

A. Yes, sir.

Q. You mentioned four-inch billets and sheet bars, and you said you were not sure about sheet bars?

A. Yes, that is what I said.

By MR. DICKINSON:

Q. Did you make rails?

A. No, sir.

Q. Did you make tank plates?

A. No, sir.

Q. Did you make universal plates?

A. No, sir.

Q. Did you make any structural work?

A. No, sir.

MR. DICKINSON: That is all.

CROSS-EXAMINATION,

By MR. SEVERANCE:

Q. Mr. Reis, you were asked about competition with the Carnegie Steel Company. Was that company a customer of yours also?

A. Largely.

Q. What did you sell to the Carnegie Company?

A. Four-inch billets.

Q. So that they were customers of yours as to the same commodity in which at times you were in competition?

A. Yes, sir.

Q. Can you tell anything about the percentage of the total business of the Carnegie Company that was thus in competition with you?

A. Indeed I could not.

Q. It would be very considerable?

A. It would be very considerable; yes, sir.

Q. The portion of your business in which you were in competition was a small proportion of your business?

A. At times it was quite large.

Q. At times quite large and at other times very light?

A. Nothing at all.

Q. Nothing at all?

A. Yes.

Q. When you say it was quite heavy, what percentage would that be of your total output of all classes, or can you not tell?

A. Well, we sold them probably 40 per cent of our total output of billets in a given month.

Q. Billets?

A. Yes, sir.

Q. What percentage of the total output of everything would that be? I mean, you made other things besides billets?

A. Oh, it would be a very small proportion.

Q. That is what I thought. So when you said "very large", you meant at times you would sell them quite a large percentage of your billets?

A. Are you speaking now of the National Steel Company?

Q. I am speaking now of the Shenango.

MR. DICKINSON: Oh, no, the National Steel Company.

MR. SEVERANCE: Well, put it the National Steel Company. I thought you were examining about the Shenango.

MR. DICKINSON: No; The National.

A. The National would have very little connection with the Carnegie in the sale of billets.

By MR. SEVERANCE:

Q. Did they at times sell billets to the Carnegie Company?

A. I do not recall any instance.

Q. In proportion to the total tonnage of the National Steel Company, the tonnage of these four inch billets that was competitive with the Carnegie Company, formed a very small percentage, did it not?

A. Yes, sir.

Q. And the same, or even less, as to the Illinois Steel?

A. Much less.

Q. As a matter of fact, the competition of the National Steel Company with the Illinois Steel Company was almost negligible, was it not?

A. Practically so.

Q. Was the American Tin Plate Company a large customer of the National Steel Company?

A. Yes, sir.

Q. Did you have any common officers?

A. Only through the executive committees.

Q. Did you have the same treasurer?

A. Yes; we had the same treasurer, Mr. Wheeler.

Q. And was he also treasurer of the American Steel Hoop Company?

A. I believe so.

Q. And of the American Sheet Steel Company?

A. I do not know. The three companies I know.

Q. Were the executive committees of these companies composed of the same men, substantially?

A. No, sir.

Q. Nor a majority of them the same men?

A. No, sir.

Q. You said their connection was through the executive committees?

A. Well, they had the same—the organizers of the companies remained on the executive committees of all the companies.

Q. They were Mr. Reid?

A. Mr. Reid.

Q. And Mr. Leeds and W. H. Moore and J. H. Moore?

A. I believe so; yes, sir.

Q. Those four gentlemen?

A. Those four gentlemen were on the executive committees of all these companies, as I remember it.

Q. Was the American Hoop Company a customer of the National Steel Company?

A. It was, yes, sir.

Q. A large customer?

A. Yes, sir.

Q. And was the American Sheet Steel Company a customer?

A. It was.

Q. It was a customer?

A. Yes.

Q. Outside of some standing contracts with the Carnegie

Company, the American Tin Plate Company bought practically all of its material from the National Steel Company, did it not?

A. After they had exhausted the contracts taken over with the constituent companies, they were practically our sole customers—they alone bought from us.

Q. They alone bought from you?

A. Yes; practically so.

Q. You have stated that after the Tin Plate Company had exhausted the contracts that were in existence at the time they took over the various plants that came to them, they bought substantially all of their raw material or steel from you?

A. They did.

Q. That is what you intended to say?

A. That is what I intended to say.

Q. That is what I understood you to say.

A. Yes, sir.

Q. What was the general condition in the country as to trade at the time of the organization of the National Steel Company?

A. We passed through a period of depression from 1893 up to 1898 or 1899.

Q. A very severe period?

A. A very severe period of depression.

Q. What was the situation of companies like the Shenango and other companies that manufactured pig iron, as to large stocks on hand, in 1898?

A. From personal knowledge we had accumulated a large stock, and from observation I noticed large stocks all through the Shenango and Mahoning Valleys.

Q. For which there was no sale until times picked up?

A. No market.

Q. It has developed here that in the year 1899 prices went up considerably; that is, during the latter part of that year and in the year 1900.

A. Yes.

Q. What was the occasion of that rise in prices, Mr. Reis, from your observation?

A. It was a natural sequence after a long depression, due

to the increased growth of the country and the exhaustion of supplies. I would consider it a natural sequence of the depressed times.

Q. Then those enhanced prices were the normal and natural result of the period of depression that had previously existed?

A. That would be my judgment.

Q. And after things got to booming, they went up very fast did they not?

A. Very fast.

Q. That condition was not confined to the steel industry, was it, or the iron industry, but it was general?

A. The general business of the country, the construction and erection of buildings.

Q. Was there at or about that time a largely increased use of steel for construction? Did that begin about that time?

A. I think so. The structural material for buildings and boats, vessels.

Q. During this period of depression there had not been a large amount of building, had there, through the country, of large structures?

A. No, sir.

Q. And it all came with a rush?

A. All came at once.

Q. And in addition to the purpose to which steel had previously been put, there was this new use, was there, or practically new use, of building these sky-scrapers out of steel?

A. That is practically new, yes, sir.

Q. And did not the use of steel in railroad and other bridges largely increase about that time?

A. It did.

Q. I think you stated that the plants owned by the National Steel Company did not manufacture rails?

A. They did not.

MR. SEVERANCE: I think that is all.

RE-DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Reis, you said you made no rails at your mill?

A. We did not.

Q. I will ask you whether or not it was equipped for making rails? Was it not rated as having a capacity for rails?

A. At the time of the acquisition of the Ohio Steel Company they had under construction a rail mill.

Q. What time was that?

A. When the National Steel Company took over the Ohio Steel Company.

Q. When was that?

A. In 1899.

Q. So, before the National Steel Company was taken over by the United States Steel Corporation, it was equipped for the making of rails, was it?

A. Yes, sir.

Q. And had a capacity for that purpose?

A. It had a rail mill, yes, sir.

Q. You say business got to booming. What time did that boom begin?

A. It started, I think, in 1898, the winter of 1898 and 1899.

Q. And that was about the time combinations got to booming, too, was it?

A. They seem to have been identical, yes, sir.

Q. When I asked you about competition with the Carnegie and the Federal Companies, did you understand that my questions applied to the National Steel Company or the Shenango?

A. The National Steel Company.

Q. That is what you understood?

A. Yes, sir.

Q. And you say they were competitors?

A. To a limited extent, yes, sir.

Q. Well, when you speak of a limited extent, you compare that percentage with the whole product of the country, do you?

A. I mean by that that we were not manufacturers of any finished material that went to the consumers.

Q. It was limited in that sense?

A. It was limited to the semi-finished or raw material.

Q. And in that sense you used the word "limited"?

A. Yes, sir.

RECROSS-EXAMINATION,

By MR. SEVERANCE:

Q. You stated in detail what that competition related to in answer to my questions?

A. It related principally to four-inch billets.

Q. That is what I understood. With reference to that rail mill, you say the rail mill was under construction at the time the Ohio Steel Company was taken over by the National Steel Company?

A. Yes, sir.

Q. Did you ever manufacture rails?

A. I do not think we rolled any during the existence of the National Steel Company.

Q. You do not think you did?

A. After the organization of the United States Steel Corporation.

Q. After that were rails rolled at that mill?

A. I do not remember.

Q. Did you go out of the business?

A. I went out of the business.

MR. SEVERANCE: That is all.

MR. DICKINSON: I would like to ask one question, Mr. Severance, with your permission.

MR. SEVERANCE: Certainly; proceed.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Did or did not your company have strong competitors in your business in 1899, and were not the Federal and the Carnegie Companies the strong competitors of the National Steel Company?

A. Strong competitors?

Q. Yes.

A. Well, as I say, their principal products, that of both the Federal and the Carnegie Companies, were finished material.

Q. In the things that you made and sold in the market they were strong competitors of yours?

A. They were, yes, sir.

MR. DICKINSON: That is all.

RECROSS-EXAMINATION,

By MR. SEVERANCE:

Q. Just a moment. Are you not mistaken about the principal products of the Federal being finished material? Should you not confine that to the Carnegie?

A. I do not think so. I call rails a finished product.

Q. You include rails?

A. Yes, sir.

MR. SEVERANCE: That is all.

(Witness excused).

HARLOW B. WHEELER,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

By MR. DICKINSON:

Q. The American Tin Plate Company was served with a subpoena duces tecum to produce certain papers therein described, and, as I understand, you have appeared on behalf of that company and also the American Sheet & Tin Plate Company, to answer that subpoena?

A. Yes, sir.

Q. Where do you live, Mr. Wheeler?

A. Sewickley, Pennsylvania.

Q. What is your age?

A. 54.

Q. What position do you hold with either of these companies?

A. Secretary and Treasurer of both.

Q. Secretary and Treasurer of both companies. How long have you been Secretary and Treasurer of the American Sheet & Tin Plate Company?

A. Since its organization, or since the consolidation in 1904.

Q. Prior to that what was your position?

A. I was Secretary and Treasurer, I think, since 1902.

Q. Of the American Tin Plate Company?

A. Of the American Tin Plate Company, and treasurer of the American Sheet Steel Company.

Q. Those two companies were combined under the American Sheet & Tin Plate Company?

A. Yes, sir.

Q. Have you or have you not the custody of the papers of those companies?

A. Some of them.

Q. State the character of papers of which you have the custody.

A. General contracts and title papers.

Q. What do you mean by general contracts?

A. Contracts that are for a period of years.

Q. You mean contracts that run for a period of years?

A. Yes.

Q. And title papers. Is that all of which you have charge?

A. I have charge of the papers pertaining to the treasury department—records.

Q. What limitation of years determine whether or not contracts come under your custody, or not?

A. I do not think there is any. It is a question of convenience.

Q. Then what determines the question of convenience as to whether or not you have charge of contracts, or whether someone else has charge of contracts?

A. There is no definite rule.

Q. Then you have charge of some contracts, and of some contracts you do not have charge. Is that true?

A. Yes, sir.

Q. State, as nearly as you can, what contracts there are of which you do not have charge.

A. I do not have charge of contracts pertaining to sales. I do not have charge of contracts pertaining to purchases where those purchases are specific. If they relate to a general matter I might have charge of them.

Q. Then, so far as a contract in relation to the sale of the products of the American Tin Plate Company, or the American Sheet & Tin Plate Company is concerned, you have no charge of such a contract at all?

A. No, sir.

Q. Who has charge of those contracts?

A. I presume the sales department.

Q. Who is in charge of that?

A. Just at present a gentleman by the name of J. I. Andrews.

Q. How long has he been with the company?

A. I think he came to the company in 1902 or 1903.

Q. Are the papers of which you do have charge and the contracts of which you do have control kept in duplicate form or not?

A. Yes.

Q. Are they bound together in compact form?

A. Yes.

Q. How are they kept and where are they kept? Are they kept in a docket file?

A. In my room.

Q. Has that docket file an index?

A. No; it is a self index file.

Q. That is to say, by looking at the party with whom the contract is made, you can turn to the index and find the contract. Is that it?

A. The papers pertaining to each property are kept by themselves.

Q. What do you mean by each property?

A. The various mills that we took over.

Q. How many of those are there?

A. Probably forty of them.

Q. There are some forty mills in respect of which separate files are kept in regard to the contracts?

A. Not all in separate files, but they are kept by themselves.

Q. That is to say, the contracts relating to the sales of each mill are kept to themselves?

A. The title papers and all papers referring to those mills, yes, sir.

Q. When was this subpoena sent to you?

A. A week ago Friday.

Q. I believe you say you cannot produce some of the papers described herein. Is that correct?

A. Yes, sir.

Q. I will take them up in order. You were asked to produce the annual reports of the American Tin Plate Company to its stockholders, from its formation to 1902. Would those be in your custody?

A. Yes. (Witness producing papers from this pocket.)

Q. Do you now produce those?

A. These are the only reports that I find.

MR. BOLLING: Had you not better tell what they are, for what years?

THE WITNESS: The reports of the treasurer for the year 1901, I believe.

By MR. DICKINSON:

Q. They are all in triplicate, are they?

A. I think they are in duplicate or triplicate.

Q. Give me one and pass the others over to the other gentlemen.

(The witness did as requested.)

Q. In response to the command to produce the annual reports of the American Tin Plate Company to its stockholders, from its formation to 1902, you produce two unsigned typewritten statements, one dated Decembr 31, 1899, and the other December 31, 1900. Are those the reports that you made, or copies of them?

A. Those are taken from the minutes of the company.

Q. Taken from the minutes of the company?

A. They are the only copies of which I know, the only reports that I know of being made.

Q. Did or did not the American Tin Plate Company make annual reports to its stockholders?

A. Those are only reports of which I have a record.

Q. Have you no knowledge of any of those reports?

A. No, sir.

Q. When did you say you began your services with the company—the American Tin Plate Company?

A. I do not recall definitely. I think it was in 1899 or 1900. I have forgotten which.

Q. Was there no report made in 1900 to the stockholders?

A. You have the only report I have been able to find.

Q. And you say you obtained this from the minutes?

A. Yes, sir.

Q. Where are those minutes?

A. In Pittsburg.

Q. I will ask you to produce the minutes. I will proceed now, but will hold you under subpoena and ask you to produce the minutes. Do those minutes show any other reports?

A. No, sir.

Q. What other search did you make, except looking into the minutes for those reports?

A. That is the only place I know of to look for them.

Q. That is the only place you did look?

A. Yes.

MR. SEVERANCE: He says it is the only place that he knows to look.

THE WITNESS: That is the only place I knew of to look.

By MR. DICKINSON:

Q. Did you make any inquiry of the President as to whether he knew of any reports?

A. He was not connected with the company in a capacity that would give him any information on the subject.

Q. Are these minutes in your custody?

A. Yes.

Q. How far back do they run?

A. To the beginning of the company.

Q. Did you ask any other officer of the company as to whether or not any of these reports were in his charge?

A. No, sir.

Q. Did you look any other place except at these minutes?

A. No, sir.

Q. And you made no search except to look at the minutes?

A. There was no other place to look.

Q. I am just asking you whether you did or not. I am not asking you whether there was any other place. You were asked to produce an agreement or agreements between the American Tin Plate Company, entered into shortly after its formation with machinery makers, to wit; A. Garrison Foundry Company; Lewis Foundry and Machine Company; Robin-

son-Rea Machine Company; Frank Neeland & Company; Mesta Machine Company; Seamen, Sleeth and Black; Lincoln Roll and Foundry Company; George A. Hoag Iron and Steel Foundry Company; Totten and Hoag; Mackintosh, Hemphill and Company; Lloyd Brothers and Company; Riverside Foundry Company; and others, in respect to the sale of machinery and rolls for tin mills, together with agreements or arrangements concerning a contract in the nature of a lease to be entered into between the said makers of machinery and any independents buying rolls or machinery, etc., together with all letters, papers, correspondence and memoranda relating to said agreements or like agreements.

Have you any of those papers?

A. No, sir.

Q. You said a while ago that contracts of sale would not be in your custody, did you not?

A. Yes, sir.

Q. How about contracts of purchase; would they be in your custody?

A. Some of them.

Q. Would the character of contracts and papers which I have just described, in what I have just read to you, be in your custody, or not?

A. Yes; they would be.

Q. Those contracts would be in your custody?

A. Those particular contracts you are talking about were in my custody.

Q. Where are they now?

A. Destroyed.

Q. Do you know who destroyed them?

A. Yes.

Q. Who destroyed them?

A. I did.

Q. When did you destroy them?

A. I don't know.

Q. By whose authority were they destroyed?

A. Mine.

Q. By your authority? Now, I will ask you when they were destroyed. State as near as you can when they were destroyed.

A. I cannot answer that question definitely. In a general way I can say that in 1904, when we removed our offices from here to Pittsburg, a large number of useless and obsolete papers were destroyed. Whether these papers were among them or not I do not know. Since that time, it has been my practice, whenever I ran across papers that were obsolete and useless, to destroy them. Just when these papers were destroyed, I do not know, but they were destroyed.

Q. Is it the custom, and was it the custom, of the American Tin Plate Company to have regular periods for the destruction of papers?

A. No.

Q. Was there any authority given by the president or the directors of the company to you at any specified time to destroy papers of any specific character?

A. No, sir.

Q. You exercised your own judgment as to what you would destroy and what you would not destroy?

A. I did.

Q. Without any authority from anybody?

A. I did.

Q. You say those papers that I have described were destroyed—all of them?

A. Yes, sir.

Q. Then there were such papers, were there?

A. There were some papers of that general character. I won't say that they specifically answered that description, as I do not know.

Q. Did or did not the American Tin Plate Company have a contract with the Garrison Foundry Company?

A. Yes, sir.

Q. It did?

A. Yes, sir.

Q. And with the Lewis Foundry & Machine Company?

A. Yes, sir.

Q. And with all the other companies that I have just named?

A. To the best of my knowledge, yes.

Q. Did you ever see those contracts?

A. Yes, sir.

Q. Did you ever read them?

A. I may have done so, but they related to matters with which I am not familiar, so I could not say anything about them.

Q. Do you know the contents of them?

A. No, sir.

Q. Do you know what they were about?

A. The supply of materials—machinery.

Q. Supply of materials and machinery?

A. And machinery; yes, sir.

Q. To your company?

A. Yes.

Q. What kind of machinery?

A. Tin mill machinery; sheet mill machinery.

Q. These were makers of machinery to be used in the manufacture of tin plate?

A. Yes, sir.

Q. These were contracts by which these companies were to sell to the American Tin Plate Company such machinery?

A. I presume so. I cannot tell you specifically, because I do not know.

Q. You do not know that? How do you know, then, that these contracts were destroyed?

A. I know that they are not in my possession, and to the best of my recollection they were destroyed. I think I destroyed them myself.

Q. Name some of these makers of machinery with whom the American Tin Plate Company had contracts for the purchase of machines.

A. Those that you have named.

Q. I will ask you to name some of them.

A. I do not know enough about it to tell you.

Q. You do not know enough about that to tell me?

A. No, sir.

Q. Can you name any of them?

A. No—I could name some that you have already read.

Q. Well, name them.

A. The Lewis Machine Company.

Q. The what?

A. The Lewis Machine Company, I think it is, the Lewis Machine & Foundry Company, or something like that.

Q. What else?

A. The George A. Hoag Company; Mackintosh, Hemphill & Company.

Q. Wait a minute. What was the second one you named?

A. Mackintosh, Hemphill & Company.

Q. All right. What others?

A. Mesta Machine Company.

Q. What company was that?

A. The Mesta Machine Company.

Q. What others?

A. I do not recall any more at the moment.

Q. That is all that you can recall at the moment?

A. Yes, sir.

Q. But you do remember that all of these contracts with these companies, the names of which I read to you, were all destroyed by you?

A. Yes, sir.

Q. Did you destroy them yourself?

A. Yes, sir.

Q. You yourself personally did so?

A. Yes, sir.

Q. When did you last see one of those contracts?

A. I do not know.

Q. You do not know?

A. No.

Q. To the best of your recollection, when did you last see one?

A. I do not remember having seen any since 1904.

Q. Not since 1904?

A. I may have done so, but I do not remember.

Q. I will ask you whether or not these contracts provided that these makers, who contracted with the American Tin Plate Company, should not sell their machinery to any other makers of tin plate in the country?

A. I do not remember it.

Q. Do you remember any of the contents of any of those contracts?

A. No, sir.

Q. Could you state any provision in any of them?

A. No, I could not mention a single provision.

Q. How long did they run?

A. I do not know.

Q. Do you know when any of them were entered into?

A. Sir?

Q. Do you know the dates when they were entered into?

A. I do not remember that.

Q. But you know that they were destroyed not later than 1904?

A. No, I do not say that they were not destroyed later.

Q. That is what you said, to the best of your recollection, is it not?

A. No; I said I did not recall having seen one since then.

Q. Then please state to the best of your recollection when they were destroyed?

A. I cannot make it any more definite than several years ago.

Q. Several years ago?

A. Yes.

Q. Could you approximate it within two or three years?

A. I do not think I could.

Q. Or three years?

A. I do not think I could.

Q. Could you approximate it within five years?

A. I do not know how many years it was, definitely.

Q. You were asked to produce a contract between the American Tin Plate Company and the American Can Company, approved by the Finance Committee of the United States Steel Corporation, on January 12, 1904. Have you produced that?

A. I have not been able to find it.

Q. Would that contract be in your possession?

A. No, sir.

Q. Where have you looked for it?

A. I have looked for it in the sales department and in the auditing department.

Q. Who helped you to look for it, if anybody?

A. I called on the heads of those departments to make a search for it in their departments.

Q. Have you given up the search as having been thoroughly exhausted, or are you still searching?

A. They told me that they had not got them.

Q. They told you that they did not have them?

A. At least that they had not got that one.

MR. LINDABURY: What date was it?

MR. DICKINSON: January 12, 1904.

By MR. DICKINSON:

Q. Did you have any correspondence in regard to that contract?

A. Not any.

Q. What is your answer?

A. There is not anything that I know of.

Q. Have you looked for the correspondence?

A. I asked the sales department for that information and was advised that they had none.

Q. You merely asked those departments and they told you that they had none?

A. Yes, sir.

Q. You made no search yourself?

A. I am not familiar with their department, so I could not search.

Q. How about the letters?

A. I have no information in regard to the letters.

Q. What search did you make for them?

A. I asked those departments for that information, and I was told they had none.

Q. Mr. Wheeler, I will ask you either to make further search for that contract, or if you are not in a position to do it, that you will have some person or persons in those departments make a search and have them here to answer that part of the subpoena under oath, and I notify you that I will expect that of you.

MR. LINDABURY: The subpoena, Mr. Dickinson, runs to the Corporation.

MR. DICKINSON: I understand, but he is here representing the Corporation.

MR. LINDABURY: He tells you he cannot produce certain

papers. The Corporation has had a search made, and it answers that it has been made by the proper custodians in the proper departments and that it does not find these papers.

MR. DICKINSON: The only answer it has made is the answer it is making through him.

MR. LINDABURY: Of course the Corporation answers through its counsel. I have given you the Corporation's answer to the subpoena.

MR. DICKINSON: Just let the record show that, will you? Is that all the answer it desires to make to the subpoena?

MR. LINDABURY: As to this particular matter; yes. The Corporation has directed an investigation to be made by the persons in charge of the department where any of these papers would be located and it has not been able to find the particular ones about which the witness has just been interrogated.

MR. DICKINSON: This is the only employee or officer of the company who will appear?

MR. LINDABURY: I say nothing of the kind. Anyone will appear whom you ask.

MR. DICKINSON: That is the reason I have asked him to have these others present.

MR. LINDABURY: You have not asked that of us. You know perfectly well that we will have anyone come here whom you desire. This witness has no control. He is not running the Corporation.

MR. DICKINSON: Then I will request of counsel that they have the persons in whose custody these several classes of papers would be, to appear and make answer.

MR. LINDABURY: Certainly; we will do that.

By MR. DICKINSON:

Q. You were asked to produce a contract entered into on or about January 22, 1901, between the Sharon Tin Plate Company and the American Tin Plate Company, whereby the American Tin Plate Company purchased the output of the Sharon Tin Plate Company for five years, together with all correspondence, memorandas and papers relating to the said contract or any similar contract with said company. Have you those papers?

A. No, sir; I have not.

Q. This was a contract of purchase that is described here, from the Sharon Company. You stated in the early part of your examination that you did not have charge, as I understood you, of contracts of sale. How about contracts of purchase?

A. That would be in the nature of a general contract and I think would be in my possession if it was anywhere.

Q. You think it would be in your possession?

A. Yes, sir.

Q. Well, what have you to say about the non-production of that, Mr. Wheeler?

A. I do not know anything about such a contract.

Q. Have you made any search for it?

A. I have.

Q. Where did you search, Mr. Wheeler?

A. I searched through my files and documents.

Q. What files did you search in?

Q. Files where I keep papers of that character.

Q. When did you begin that search?

A. Last Saturday.

Q. When did you end it?

A. Yesterday afternoon.

Q. How much of that time were you engaged in making that search?

A. Long enough to go through the files where those papers would be.

Q. What was that file; how would you describe it?

A. Well, it is the document file in which I have all the papers pertaining to the Sharon Tin Plate Company.

Q. The document file?

A. Yes, sir.

Q. And if there was such a contract it ought to be in that file?

A. Yes, sir.

Q. You say you have no knowledge as to whether there was or was not such a contract?

A. I have no knowledge of a contract of that description.

Q. Have you knowledge of any contract by which the

Sharon Tin Plate Company agreed to sell its output for any period of time to the American Tin Plate Company?

A. I do not think there ever was such a contract.

Q. How about part of their output?

A. I do not think there was any contract with them by which they sold a definite part of their output.

Q. To your company, you mean?

A. Yes. I do not know that we ever bought anything from them, so far as I know.

Q. How?

A. We never bought anything from them, so far as I know.

Q. I questioned you about certain contracts of the American Tin Plate Company. You understood it applied to that, did you?

A. State that question again.

Q. What I have been questioning you about are contracts with the American Tin Plate Company?

A. Yes, sir.

Q. Your company, the American Sheet & Tin Plate Company, was commanded to produce certain papers, as follows.

MR. LINDABURY: Judge Dickinson, you are going to another company?

MR. DICKINSON: Yes, sir; the American Sheet & Tin Plate Company.

MR. LINDABURY: Your questions on this other subpoena were so framed as not to elicit certain information which the corporation desires to give in answer to this subpoena.

MR. DICKINSON: You mean the ones we have already spoken of.

MR. LINDABURY: Yes, sir.

MR. DICKINSON: Anything you want to state, Mr. Lindabury, state it.

MR. LINDABURY: You asked about contracts with the American Tin Can Company.

MR. DICKINSON: Yes.

MR. LINDABURY: Or, rather, you asked with regard to a contract of a particular date, which the witness said that company did not have. They have, however, contracts of a later date with that company.

MR. DICKINSON: What are those dates?

THE WITNESS: Not under this subpoena.

MR. SEVERANCE: They are under the other subpoena, are they not?

MR. DICKINSON: Was that a contract with the American Tin Plate Company, or the American Sheet & Tin Plate Company?

MR. SEVERANCE: It is the other company.

MR. DICKINSON: The American Tin Plate Company?

MR. LINDABURY: Yes; you are right. I did not want it to be passed by inadvertence, that is all, but I see now it is covered by the next subpoena.

MR. DICKINSON: Yes.

By MR. DICKINSON:

Q. I now question you with regard to the subpoena of the American Sheet & Tin Plate Company, which was commanded to produce an agreement between the American Sheet Steel Company and certain manufacturers of rolls entered into shortly after the formation of said company, whereby said company was to take their entire output for five years, together with all letters, papers, correspondence and memoranda relating to said agreement, or like agreement.

A. That refers to machinery and roll contracts, did you say?

MR. SEVERANCE: Let stenographer read the question.

(The question was read by the stenographer.)

A. I have no such papers.

Q. Would such papers be in your custody?

A. Yes, sir.

Q. Your immediate custody, or that of some of your subordinates?

A. In my personal custody.

Q. Have you in your custody any contracts of any period between the American Sheet Steel Company and any manufacturers of rolls, whereby the American Sheet Steel Company provides to take their output for any period of years?

A. No, sir.

Q. Have you made search for them?

A. I have.

Q. Where?

A. In the place where such contracts are kept.

Q. When did you search for them?

A. On receipt of this subpoena.

Q. Last Saturday, was that?

A. No; that one came a week ago last Friday.

Q. When did you begin the search under this subpoena?

A. Immediately on its receipt.

Q. How long a time did you devote to that?

A. Long enough to go through the boxes and files where those would be kept.

Q. Where were they kept, in boxes or files?

A. Those were kept in boxes.

Q. Where were the boxes kept?

A. In my office.

Q. What kind of boxes were they?

A. Tin boxes.

Q. How many boxes did you go through?

A. All that I had.

Q. How many were there?

A. Two.

Q. What period of time did they cover?

A. What?

Q. Those boxes, where you searched for these agreements that you have described?

A. I have had them for ten or twelve years.

Q. And had any of the papers of that character been destroyed at any time?

A. Yes, sir.

Q. They had been?

A. Yes, sir.

Q. How far back did the papers in those boxes go?

A. They contained only live matters.

Q. What would you call a live matter?

A. Anything that was active at the time.

Q. It was not controlled, then, by a question of time, but whether or not it was a matter yet to be carried out?

A. Yes, sir.

Q. What became of the contracts which had been executed and were not what you call live matter?

A. I destroyed them after they had become obsolete and useless.

Q. How long after that?

A. There was not any specific time.

Q. And if there were any papers of that sort they were destroyed, were they?

A. Yes.

Q. Have you any recollection that there were any papers of that sort?

A. Yes.

Q. There were such contracts, and they were destroyed?

A. There were some contracts and they were destroyed.

Q. Some contracts of that character?

A. Yes, sir.

MR. SEVERANCE: He does not attempt to state the contents of them.

MR. DICKINSON: I have not asked the contents. He says of that character.

MR. SEVERANCE: Your question almost implies it, Judge, "such contracts."

MR. DICKINSON: He cannot say he destroyed them unless he knew something about their character.

MR. SEVERANCE: He might know they were contracts for purchasing machinery from these companies without knowing their contents.

MR. DICKINSON: I will ask him.

By MR. DICKINSON:

Q. Whether or not there were any contracts between the American Sheet Steel Company and any makers of rolls and other machinery for any period of time, which had been in existence and which had been, at the time that you made this search, destroyed by you?

A. There had been such contracts; yes, sir.

Q. You were asked to produce a contract between the American Sheet & Tin Plate Company and the American Can Company, referred to in Finance Committee meeting of May 9, 1905, together with all other contracts whereby the American Can Company was given a concession with respect to

products purchased by it from the American Sheet & Tin Plate Company, or the American Sheet Steel Company from the formation of the American Sheet Steel Company to January, 11, 1912. Did you make any search for any contract of that sort?

A. That contract is in the possession of our attorneys.

MR. DICKINSON: You were asked to produce it. What position do you want to take about that, Mr. Lindabury?

MR. LINDABURY: The Company produces it. That is, the company has it here, but it declines to produce it in answer to the subpoena, on the ground that it is a contract with a customer for the disposal of the company's product simply, and is not relevant to the issue in this case, and to produce it would be simply to disclose the private business affairs of the company. That refusal, of course, however, is subject to the ruling of the Court, there being no official here competent to rule upon the evidence, defendants having no way of taking the ruling of the Court, except by refusing, until the Court has had opportunity to pass upon the question of the admissibility.

I will state that there are two such contracts, one of which is dated April 12, 1905, and the other December 1, 1908.

MR. DICKINSON: Do you have any objection to letting the record show that that matter can be taken up at a convenient time with the Court, not necessarily in connection with the examination of this witness.

MR. LINDABURY: We will be quite willing to agree with counsel as to the time of presenting it, and as other similar questions may arise, I suggest it might save the time of all of us to wait a little while so that we will not have to go to Philadelphia on a single question or objection.

MR. DICKINSON: So we will just agree to that and have it on the record.

MR. LINDABURY: Yes.

By MR. DICKINSON:

Q. I omitted to ask you, Mr. Wheeler, what you have to say with regard to the subpoena addressed to the American Sheet Steel Company to produce all papers, memoranda, correspondence, circular letters and documents sent out by Isaac

Frank or others concerned in the organization of the American Sheet Steel Company to various makers of sheet steel concerning the organization of the American Sheet Steel Company, together with all options and agreements made and entered into between the said Frank or other promoters of the American Sheet Steel Company and the concerns taken into said company.

A. We never had any papers of that character.

MR. DICKINSON: That is all for the present. We may want to recall Mr. Wheeler, but, of course, I will give you notice, and he need not continue in attendance.

CROSS EXAMINATION

By MR. BOLLING:

Q. Mr. Wheeler, is there any other officer of the Sheet & Tin Plate Company who has been an officer of the company as long as yourself?

A. Probably not as regards all the companies—both of them.

Q. There is no one who would be more likely to know what papers the company had than yourself, is there?

A. As to the character of papers to which I have testified, no.

Q. So that there was no one to whom you could appeal who would be more likely to be informed upon these matters than yourself?

A. There is no one to whom I could go for information of that character.

Q. You have spoken of these old agreements with the makers of tin plate and machinery and the makers of rolls. How long ago do you understand those agreements had become obsolete?

A. Very shortly after the formation of the Steel Corporation.

Q. That is nearly eleven years ago?

A. Approximately.

Q. Did you understand that they had any further usefulness whatever in the business of the company?

A. They were absolutely useless.

Q. Did you ever suppose that they would ever be needed for any other purpose, for any purposes of reference?

A. That idea had not arisen on the horizon at that time.

Q. No one ever asked you to see them in all those years?

A. They were never referred to.

Q. You did not suppose they would ever be needed in any court proceedings of any kind?

A. I never dreamed of it.

Q. When you go over your papers, has it been your custom to destroy or discard papers which your experience has shown have become obsolete?

A. It has been practically continuous ever since 1904.

Q. Was the occasion of your moving your office from New York City to Pittsburg the occasion which stands out most clearly for the putting of that practice into operation on a large scale—the clearing away of dead matter in your files?

A. That was an occasion when a great many of them came to light.

Q. And all those which were unearthed at that time and supposed to be useless were destroyed?

A. I discarded anything I felt would be of no further value.

Q. Would it be possible, within the reasonable bounds of any offices that your company has to retain every paper of every sort over a period of more than 12 years?

A. That depends on how many storage warehouses we might acquire for that purpose.

Q. It would take a large number of storage warehouses, then, would it not?

A. Yes, sir.

Q. And a considerable force of clerks to be able to find anything, after you got them into those storage warehouses, would it not?

A. And it is doubtful if they would find them then.

Q. You have produced, have you not, a number of papers called for by these subpoenas which Judge Dickinson has mentioned, because they have been turned over to them?

A. I do not understand.

Q. You have produced papers called for by the subpoenas,

not mentioned by Judge Dickinson, and turned them over to them, have you not?

A. Not that I know of.

Q. Papers on special brands?

A. I have not turned over any papers of that character.

Q. They were produced by the company?

A. Yes, sir.

MR. DICKINSON: Papers have been turned over by counsel to me.

MR. BOLLING: Those papers have been turned over to counsel.

MR. DICKINSON: Those described in there which I did not question him about. They were turned over by counsel to me.

MR. COLTON: With the exception of one that was not in existence.

MR. DICKINSON: The blank forms that were introduced, those were all that were turned over to me.

By MR. BOLLING:

Q. You have, then, produced everything you have which was called for by the subpoenas?

A. I have.

Q. Except those two contracts with the Can Company, to which reference was made?

A. Yes.

JOHN A. TOPPING,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

By MR. DICKINSON:

Q. Where do you live?

A. I live in Greenwich, Connecticut.

Q. What is your age?

A. Fifty-one.

Q. In what business are you engaged at present?

A. The steel business.

Q. In connection with what company or companies?

A. I am Chairman of the Republic Iron & Steel Company.

Q. Did you at any time have any connection with the Aetna Iron & Steel Company?

A. I did.

Q. In what capacity?

A. I was connected with the Aetna Iron & Steel Company from 1887 until the time of its absorption by the National Steel Company.

Q. By the American——

A. (Interposing.) By the National and the American Tin Plate Company.

Q. Did you have any connection with the Bellaire Company?

A. I had not.

Q. Were you a stockholder in the Aetna Iron & Steel Company?

A. I was.

Q. Did you have any connection with the American Sheet Steel Company upon its formation?

A. I had.

Q. Did you hold an official position, and if so, what was it?

A. Yes; first vice-president.

Q. How long did you continue to hold that office.

A. About three years, as I recollect.

Q. State what part you took, if any, in the formation of the American Sheet Steel Company?

A. None whatever.

Q. Who were the parties who were active in the formation of that company?

A. I have no direct knowledge as to who the promoters were, except that I happen to know a few, one or two——

Q. Name those.

A. Mr. Reid and Mr. Moore.

Q. Your company went into that company, did it?

A. It did.

Q. Did you get stock in that company for the stock which you had in the Aetna Company?

A. I personally took all my new interest in stock.

Q. What do you mean by new interests?

A. For the interests I sold I accepted stock in the new company, in exchange for my old stock.

Q. Please look at this book I hand you, a book entitled "The Iron & Steel Works of the United States; also of Canada and Mexico, 1898."

A. Is that Mr. J. H. Swank's book? I am familiar with it. I recognize the book.

Q. State whether or not that is recognized in the iron trade as a standard work.

A. It is.

Q. Is it accepted as authority for what it gives in the way such products are made by certain companies and where those companies are located and what the amount of their output is and so forth?

A. I think it is the only published record we have in which the companies are listed. It is known as an iron and steel directory of works. While the data contained in it are approximately correct, it is not necessarily entirely accurate in all its details.

Q. Is it accepted generally in the trade as an accurate work?

A. I think so, in a general way.

Q. Of course all publications are liable to have some errors in them, are they not?

A. It is the best record we have.

Q. It is a recognized standard, is it?

A. Of a directory character.

Q. I notice in the preface of the book it speaks of an association. It states that this edition is presented herewith to the members of the American Iron & Steel Association and to the whole American Iron trade. You understand what is referred to there as the American Iron & Steel Association?

A. I do.

Q. Please explain to us what it is.

A. The American Iron & Steel Association is nothing more than a statistical organization, that has been kept alive by the voluntary contributions on the part of manufacturers of iron and steel for a great many years, for the purpose of tabulating the production of different products.

Q. And this book is published under that auspices, is it?

A. No, not exactly. It is published by Mr. Swank, who

manages the work of compilation, and he gets his compensation out of the performance of that duty.

Q. From the members of the association?

A. Well, not directly, but indirectly he does, yes.

Q. I am simply trying to get at this point, Mr. Topping. Not that that is any unlawful association——

A. I understand perfectly——

Q. But simply that this was an association that contributed directly or indirectly to the bringing out of this work and it was recognized, therefore, as an authentic work for what it purported to be.

MR. LINDABURY: Is your object to credit or discredit the work?

MR. DICKINSON: I want to credit it.

MR. LINDABURY: We accept that. We agree it is authentic. While there may be errors in it, we agree, as Mr. Topping says, it is an authority.

MR. DICKINSON: Oh, you do? Very well, then.

By MR. DICKINSON:

Q. Mr. Topping, state whether or not you know what products were made by the Apollo Iron & Steel Company, located in Pennsylvania, at the time of the formation of the American Sheet Steel Company?

A. Generally speaking, yes.

Q. State generally what they were?

A. Sheet steel.

Q. Where were those products generally sold?

A. Throughout the United States, I should say.

Q. Outside the State of Pennsylvania?

A. Decidedly.

Q. Take the Cambridge Iron & Steel Company, of Cambridge, Ohio; what did they make?

A. Sheet steel.

Q. Where were their products sold?

A. They were sold throughout the United States.

Q. State whether or not those two companies were in competition for that product in interstate commerce.

A. So far as they made common products.

Q. I mean, so far as they made common products.

A. Yes.

Q. And they did make common products?

A. Yes; to a certain extent.

Q. You understand I am speaking, now, as of the time when the American Sheet Steel Company was formed, and as prior to that?

A. Yes.

Q. I will ask you the same questions, without repeating them except to specify the products, in regard to the Canton Rolling Mill Company. What did they make?

A. They were competitors, in a sense.

Q. And they made sheet steel?

A. Yes, sir.

Q. And they were competitors in Interstate Commerce?

A. Yes.

Q. And sold outside of the State of Ohio, where they were in competition with these other companies?

A. They did.

Q. What else did the Canton Rolling Mill Company make?

A. I think they were manufacturers of corrugated iron and steel ceilings.

Q. Did any other of the concerns that came into the American Sheet Steel Company make those two?

A. Some did.

Q. Can you name some of them?

A. Our own company did, for one.

Q. That is the Aetna Company?

A. Yes.

Q. Suppose you look over that list.

A. The Cincinnati Rolling Mill and the Aetna Standard did.

Q. And these were in competition with each other, were they?

A. Yes; so far as they made common products.

Q. Take the Chartiers Iron & Steel Company, Carnegie, Pennsylvania. What did that company make?

A. They made steel, but rather a different product from that of some of the other plants. They made some common

sheets, but they were also engaged in manufacturing specialties to a greater extent, possibly, than the Cambria Works.

Q. Were any of these other companies engaged in manufacturing such specialties?

A. Some were. Some were not.

Q. Name some of those that were.

A. I could not tell you.

Q. You mean that you cannot recall from memory?

A. No, sir.

Q. If you saw their names would you be likely to recall them?

A. I do not know that my memory would be entirely correct in covering such a detail as that.

Q. Still, it may be as to some, when you look over that list on that page in the petition. Please look at page 13 in the petition and see if your recollection does enable you to recall any of them, and just state what they are.

A. I doubt if this will help me much.

Q. Just look at that page 13 of the original petition and tell us.

A. (After consulting the petition.) I think possibly Kirkpatrick & Company would be more nearly in the same line of product, as I would remember from my list.

Q. And were those two in competition with each other?

A. I would say so.

Q. In interstate business?

A. Yes, sir.

Q. The Corning Steel Company; what did that make?

A. I think their product was entirely common black sheets, rougher products.

Q. Did any of these other companies make any black sheets?

A. Some of them did. We did, in our company.

Q. Can you name any other companies that did?

A. Yes, sir; most of them did, except these few who were more particularly engaged in the manufacture of specialties.

Q. And in that product they were competitors in interstate commerce in this country?

A. Yes; to an extent.

Q. Take the Dennison Rolling Mill Company, Dennison, Ohio; what did they make?

A. Common sheets, as I remember it.

Q. And they were in competition with this Corning Company, then, were they, in common sheets?

A. Yes; to the extent that they sold in the Chicago market.

Q. And they did sell there, did they?

A. I do not know as to that, from any personal knowledge.

Q. You were an officer of this company, were you not?

A. The Dennison mill was not continued in operation very long after— I do not know whether it was or not when I was Vice-President of the Sheet Steel Company.

Q. To what company had the Dennison mill originally belonged?

A. I do not remember that.

Q. Was it shut down?

A. It was a very small operation, Mr. Dickinson, and I do not recollect, whether, after it was acquired, it was ever operated or not by the Sheet Steel Company. My best recollection is that it was not. It was poorly equipped and a badly located plant, I should say, from recollection.

Q. Was it a separate concern?

A. It was a separate company, yes, sir, a separate organization.

Q. It was a separate company acquired by the American Steel Company, and not operated?

A. I think so.

Q. The Dresden Iron & Steel Company of Dresden. What do you say about that?

A. It was about of the same general character as the one to which you have just referred, the Dennison.

Q. Was it operated?

A. I think it was for a brief time.

Q. Was that a separate concern?

A. Yes, a separate concern.

Q. A separate company?

A. Yes, sir.

Q. It was only operated for a brief time?

A. That is my recollection.

Q. Had that company been in competition with any of these other companies?

A. I would say yes, so long as it was operated.

Q. Which one?

A. Any of them making similar products.

Q. Some of them did make similar products, did they?

A. Some of them did.

MR. SEVERANCE: I am informed that the Dresden Company was operated as late as 1910.

THE WITNESS: I do not remember. I am speaking from my recollection.

By MR. DICKINSON:

Q. The Falcon Iron & Nail Company of Niles, Ohio. What did that company make?

A. They made tin plate and sheets.

Q. Tin plate and sheets, did you say?

A. Yes, sir; both.

Q. Were they in competition, in interstate commerce, with a number of these other companies in those products?

A. They were.

Q. Take the Hyde Park Iron & Steel Company, of Hyde Park, Pennsylvania. What did they make?

A. They made sheets, as I remember.

Q. Were they competitors of these other companies, some of them, in common products?

A. So far as other companies made similar products.

Q. In interstate commerce?

A. Yes.

Q. What did Kilpatrick & Company, Limited, of Leechburg, Pennsylvania, make?

MR. LINDABURY: We might admit that in so far as they made common products and sold in common territory that they were competing.

MR. DICKINSON: If you will admit that, it will save some time. I do not want to go out and get other witnesses to show where they sold. Unless there is a very substantial admission, I do not wish to leave the matter in that status.

MR. LINDABURY: Inasmuch as the usual hour for adjourn-

ment has arrived, suppose we discontinue this matter until to-morrow, and take it up then.

MR. DICKINSON: That is entirely satisfactory. I am not through with this witness. I will want you to-morrow morning.

(Whereupon, at 4 o'clock p. m., the hearing was adjourned until to-morrow, Wednesday, May 15, 1912, at 10:15 o'clock a. m.)

EIGHTH DAY.

Room 210, Custom House,
New York City,

Wednesday, May 15, 1912.

The hearing was resumed at 10:15 o'clock a. m., before Special Examiner HENRY P. BROWN.

Appearances the same as heretofore noted.

JOHN A. TOPPING,

the witness under examination when the adjournment was taken, resumed the stand for further direct examination.

By MR. DICKINSON:

Q. Mr. Topping, I intended to ask you, towards the beginning of your examination, whether or not you are a stock holder in the United States Steel Corporation.

A. I am not. I have no interest whatever in it.

Q. I understand you want to make a correction in your testimony?

A. I misunderstood a question, yesterday, Mr. Dickinson, as between the Dennison and Dresden mills. I misunderstood it. I thought you referred to the Dennison mill when I said the Dresden mill had been wrecked. It was not wrecked as a matter of fact, during my administration, but was operating.

Q. How about the Dennison mill?

A. The Dennison mill was wrecked, to the best of my recollection; at least, it was not operating.

MR. LINDABURY: It was wrecked?

THE WITNESS: It was wrecked, or it may have been wrecked. I do not think it ever operated during my administration.

MR. LINDABURY: Do you mean wrecked in the sense of dismantled?

THE WITNESS: Yes. I used the word wrecked in the sense of dismantled.

By MR. DICKINSON :

Q. The result would be the same, would it not?

A. I think so. We wiped it off the map.

Q. I also intended to ask you, Mr. Topping, and I will now ask you whether or not you declined to give Government counsel any information before you were called as a witness, or to talk to them about this case?

A. I did.

MR. LINDABURY: I think he testified yesterday on that subject.

MR. DICKINSON: No. It was another witness who did. I did not ask Mr. Topping that.

By MR. DICKINSON :

Q. I did not ask you that, did I, yesterday, Mr. Topping?

A. You did not.

Q. I will ask you about P. H. Laufman & Company, Paul-ton, Pennsylvania; what products were made by that company?

A. Sheet steel.

Q. Where was that marketed?

A. I think very generally throughout the United States.

Q. Was it sold in interstate commerce in competition with these other companies that you have mentioned as making sheet steel?

A. It was.

Q. The time, you understand, is as of the time of the formation of the American Sheet Steel Company?

A. So far as it was in competition with common products.

Q. With respect to common products they were in competition at that time and had been previous thereto?

A. Yes, sir.

Q. How about Kirkpatrick & Company, of Leechburg, Pennsylvania? I believe I asked you about them, but we adjourned before you answered. What did they make?

A. They made sheet steel of a general character, and specially finished some of it.

Q. State whether or not your answer in respect to inter-

state competition would be the same with respect to that company?

A. I make the same general reply to that as in regard to the others.

Q. How about the Midland Steel Company, of Muncie, Indiana?

A. The same reply applies to them.

Q. That is to say, as to products and as to competition?

A. Yes.

Q. How about the Aetna Standard Iron & Steel Company of Bridgeport, Ohio?

A. So far as our products were common, we were competitors in a general way.

Q. What did that company make?

A. They made a very widely assorted line of products; tin plate, sheets, bar steel, light rails and small structural shapes, galvanized sheets, roofing products and steel.

Q. In respect to all of those products that you have named, was it in competition with some of those companies, one or more, that were combined in the American Sheet steel Company?

A. Yes; so far as the products were common, and in that sense competitive, yes.

Q. And some of these variously made the same products that this company made, did they?

A. Some of them did, yes.

Q. What did the New Philadelphia Iron & Sheet Company of Ohio make?

A. I think they made common sheets exclusively.

Q. State whether or not they were marketed in interstate commerce in competition with these other companies who made like products.

A. They were.

Q. And some of those companies made like products?

A. Yes.

Q. What did the Old Meadow Rolling Mill of Scottdale, Pennsylvania, make?

A. Common sheets, I think.

Q. And they were marketed in interstate commerce outside of the State of Pennsylvania?

A. Yes.

Q. In competition with others of the companies combined?

A. Yes.

Q. What did the Piqua Rolling Mill Company and roofing plant of Cincinnati Corrugating Company, Piqua, Ohio, make?

A. Black sheets and roofing products.

Q. And sold them generally in interstate commerce?

A. Yes.

Q. Outside of the State of their manufacture, in competition with other companies?

A. Yes.

Q. And there were other combined companies that made like products?

A. Yes; a few.

Q. What did the Pittsburg Steel Manufacturing Company of Shousetown, Ohio, make?

A. I do not remember much about their products. I think they had a very small plant and made common sheets only. That is my recollection.

Q. What did the Scottdale Iron & Steel Company of Scottsdale, Pennsylvania, make?

A. Common sheets.

Q. And they were sold in interstate commerce outside of the State of Pennsylvania?

A. Yes, sir.

Q. In competition with others of these companies making like products?

A. Yes, sir.

Q. There were others of these companies making like products?

A. There were.

Q. What did the Struthers Iron & Steel Company, of Struthers, Ohio, make?

A. Common sheets.

Q. Sold in interstate commerce?

A. They were.

Q. Outside of the State of Ohio?

A. Yes, sir.

Q. And in competition with these other companies?

A. Yes, sir.

Q. What did the Chester Rolling Mill Company of Chester, West Virginia, make?

A. I think the Chester is a tin plate plant.

Q. You are not positive about it?

A. I am not positive as to that.

Q. I will pass that by, then.

Q. What did the Coshocton Rolling Mill Company of Coshocton, Ohio, make?

A. Black sheets; common sheets.

Q. They were sold in interstate commerce outside of the State of Ohio?

A. I think so.

Q. That is the best of your knowledge?

A. Yes.

Q. And in competition with these other companies, making like products?

A. Yes, sir.

Q. There were others of them making like products?

A. Yes, sir.

Q. What does the W. Dewees Wood Company of McKeesport, Pennsylvania, make?

A. Special products, almost exclusively.

Q. What do you mean by "special"?

A. Products that were not made by others.

Q. Do you mean to say that none of these other companies—

A. (Interrupting) I mean to say that in most of their products they had no competitors.

Q. Did they have competitors in any of their products?

A. I think they had in a small part of their output.

Q. They came in competition with some of these other Companies in the combination?

A. Yes, sir. Generally speaking we did not regard the W. Dewees Wood Company as competitors of ours.

Q. They did not make sheet iron and sheet steel?

A. Yes, but of a special finish and character, not made by other plants.

Q. But to some extent they were in competition with others that were combined in the American Sheet Steel Company?

A. I should say to a very limited extent.

Q. The Reeves Iron Company, of Ohio. What did that company make?

A. Common sheets.

Q. Black plates for tinning?

A. I think they made some black plates, also.

Q. Did they make sheet iron and steel?

A. Yes; more generally common black plates.

Q. And they sold it, did they not, in interstate commerce, outside of the state of manufacture?

A. They did.

Q. And in competition with others of those companies?

A. Yes, sir.

Q. What did the West Penn Sheet Steel Works, of Pennsylvania, make?

A. Black sheets.

Q. They were sold in interstate commerce?

A. Yes, sir.

Q. Outside of Pennsylvania?

A. Yes, sir.

Q. And in competition with others of the companies in the combination?

A. Yes, sir.

Q. Take the Saltsburg Rolling Mill Company of Pennsylvania: What did they make?

A. Common sheets, I think.

Q. Were they sold in interstate commerce outside of Pennsylvania?

A. I think so.

Q. And in competition with others of the companies in this combination?

A. Yes, sir.

Q. Were you, or were you not, connected with the La Belle Iron Works?

A. I was.

Q. At what period?

A. In 1904 I was elected as president.

Q. How long did you stay with that company?

A. I was elected in the latter part of 1903, I think, on second thought, I was with them for about a year, assisting in the reorganization.

Q. You were with them from some time in 1903, for about a year thereafter?

A. The latter part of 1903 or the early part of 1904.

Q. What kind of mills did the Aetna Standard Iron & Steel Company have at Bridgeport?

A. Blast furnaces and steel works.

Q. Black plate mills?

A. And tin plate mills.

Q. Did they not have black plate mills?

A. Yes, sir; bar mills, plate mills and sheet mills. We also had what we called our roofing department and the galvanizing department.

Q. Please state whether or not you had there a mill that had been formerly operated as a sheet mill, which was turned into a tin plate mill?

A. No, hardly that. We converted a sheet mill into a tin mill for experimental purposes, and afterwards built a tin department and added a tin mill. That was during the early period of experimentation in the manufacture of tin plate.

Q. What is the comparative cost of converting a sheet mill into a tin mill? That is to say, what change in equipment is involved?

A. It means a modification of your furnace and a shortening up of your mill generally and an additional tin house, and a dipping plant; quite a material change.

Q. Does that involve a large expense?

A. Quite a large amount.

Q. And much time?

A. Naturally so.

Q. It can be done, however, with a good deal of saving of original machinery and equipment, can it not?

A. No, sir; it cannot. There is not very much economy as a general proposition in working over any old machinery and converting it to a new use.

Q. State whether or not the Aetna Standard Iron Company owned and operated works at Mingo Junction?

A. They did.

Q. What were the products which they produced there?

A. Steel, pig iron, sheet bars, bar steel, merchant bar steel.

Q. What connection did you have, if any, Mr. Topping, with the American Steel Hoop Company?

A. I had none.

Q. Were you a stockholder in that company?

A. I was not.

Q. Did any of the concerns in which you had been interested, or with which you were connected, go into that company?

A. No, sir.

Q. I will ask you whether or not the works of the Aetna Standard Iron & Steel Company, which were at Mingo Junction, and to which we have just referred, were taken over by the American Steel Hoop Company?

A. Our property was sold, Mr. Dickinson, to the American Tin Plate Company and the National Steel Company.

Q. When was that?

A. In the period of 1900, during the consolidation period.

Q. When you were with the Aetna Standard Iron & Steel Company were you or were you not familiar with the trade and competition in respect of the products that were manufactured at these junction works?

A. I was.

Q. Did you know anything of the Union Iron & Steel Company, at Youngstown, Ohio?

A. I did.

Q. What did that company make?

A. Bar steel and bar iron.

Q. Did you know the Isabella Furnace Company?

A. I knew of them in a general way; yes, sir.

Q. What were their products?

A. Pig iron.

Q. Where did the Union Iron & Steel Company sell its products?

A. Throughout the United States.

Q. Generally in the trade outside the State of manufacture?

A. Yes, sir.

Q. State whether or not the Isabella furnace made some products like those made by the Union Iron & Steel Company?

A. I do not think they did, sir. One was a blast furnace

and the other was a rolling mill. There could not have been anything in common.

Q. What did the Isabella Furnace make?

A. Pig iron only.

Q. Did you know the concern of J. Painter & Sons, of Pittsburg?

A. I did.

Q. What did that company make?

A. Hoops and bends almost exclusively.

Q. Did you know the William Clark & Sons Company, Pittsburg?

A. I did.

Q. What did they make?

A. The same products.

Q. State whether or not those two companies marketed their products generally in interstate commerce?

A. Yes, sir.

Q. In competition with each other?

A. Yes, sir.

Q. And outside of the state of their manufacture?

A. Yes, sir.

Q. What did the Lindsay & McCutcheon Company, of Pennsylvania make?

A. The same character of products.

Q. As those other two companies?

A. Yes, sir.

Q. Were they in competition with each other in interstate commerce?

A. They were.

Q. And outside of the state of their manufacture?

A. Yes, sir.

Q. What did the Keystone Rolling Mill Company of Pittsburg make?

A. I do not know anything about their product.

Q. What did the P. L. Kimberly Company, of Pennsylvania make?

A. Bar iron exclusively.

Q. Did they not make hoops and wrought iron nails?

A. I do not think they formerly made nails; latterly they did. They are a very old concern. Their product was almost

exclusively bar iron, but I do think they made some light bands with which we occasionally came in contact.

Q. You stated that the Union Iron & Steel Company made bar iron also.

A. I did.

Q. Were these companies in competition in interstate commerce in that business?

A. They were to that extent.

Q. What did the Pomeroy Iron & Steel Company of Ohio make?

A. That is Pomeroy, Ohio. It is a little iron mill down the Ohio River.

Q. What did it make?

A. Common bar iron.

Q. Hoops?

A. I think not.

Q. Do you know whether it made bands, or cotton ties?

A. I am mistaken about that. They made light bands and cotton ties.

Q. Were they in any respect in competition with any of these other companies that you have named?

A. To a limited extent only, I think.

Q. That is to say, to the extent that they made common products?

A. Most of the products were marketed down in the southern district.

Q. You mean south of Ohio?

A. Yes, sir; I think so; on the Ohio River.

Q. Cotton ties were generally marketed south of the Ohio River, were they not?

A. Naturally so.

Q. So these other concerns that were making cotton ties were in competition with this company?

A. Yes, sir; to a certain extent. The Union Iron & Steel Company, I believe, was the only one of the companies you have previously mentioned that made cotton ties, and at that time they owned the Pomeroy plant?

Q. Owned the Pomeroy plant?

A. The same interests; that is my recollection.

Q. Are you positive about that?

A. I feel reasonably certain that that is the fact, because I knew the gentlemen who owned the plant.

Q. Who was the President of the Pomeroy Company?

A. I do not know that they had a president. The Taylor interests, of Youngstown, according to my recollection, were the owners of those properties. They had a small corporation. I do not remember who was the President. William E. Taylor was the active man in charge of directing sales, I remember, at that time.

Q. What did the Portage Iron Company, of Pennsylvania make?

A. I do not know very much about it. I think they were an iron mill.

Q. Do you know whether they made steel bars?

A. I do not.

Q. Cotton ties?

A. I do not know.

Q. Do you know whether they made wire rods and wire nails?

A. I would not think so.

Q. How about the Monessen Steel Company, of Pennsylvania, what did that company make?

MR. LINDABURY: Mahoning, you mean?

MR. DICKINSON: No; Monessen.

MR. LINDABURY: Oh yes, the one that you passed?

MR. DICKINSON: Yes.

A. Why, the Monessen plant made tin plate alone, as I recall it; I do not think they made any black plate.

By MR. DICKINSON:

Q. You do not know what they made?

A. I should say tin plate, to the best of my recollection.

Q. You do not know whether they made hoops or not?

A. I do not think they did. There is, however, at Monessen, as I remember, a little mill making hoops, that belongs to the Pittsburg Steel Company; but that is not the plant to which you referred, is it?

Q. No; that is not the one I am asking you about.

A. I thought not.

Q. Did or did not the Aetna Standard Iron & Steel Company have a steel department which had formerly been operated by the Mingo Junction Steel Company?

A. By the Mingo.

Q. What were the products of that company?

A. Billets and sheet bars.

Q. And blooms?

A. Yes.

Q. State whether or not it was building another mill at the time it was taken over?

A. It had completed its construction substantially at the time it was taken over.

Q. How long had it been completed?

A. Well, we were a year and a half—we bought the Mingo Junction Works and rebuilt the Bessemer plant, reconstructed the sheet bar mill and billet mill, and generally overhauled the entire plant, and that work was substantially completed at the time the National Steel Company acquired it.

Q. And all that property was acquired by the National Steel Company?

A. By the National Steel Company; yes, sir.

Q. State, Mr. Topping, whether or not in the sale of such products, that is, slabs and billets, there was competition between the Aetna Iron & Steel Company—

A. Aetna Standard Iron & Steel Company, you mean?

Q. Yes; and the Illinois Steel Company.

A. Not to any extent, no sir, because we did not sell our products in the Chicago market.

Q. But you were selling it outside of the state of manufacture?

A. Most of our products were sold in the Ohio, Pennsylvania, and West Virginia districts.

Q. State whether or not the Illinois Steel Company sold in Ohio?

A. I do not know; I was not in competition with them.

Q. You were not in competition with them?

A. No, sir.

Q. State whether or not the Carnegie Company sold in the same territory in which your company sold?

A. They did.

Q. Were they competitors in the products that you have mentioned?

A. Yes, sir.

Q. In interstate commerce generally in the same territory where you sold?

A. Yes.

Q. Outside the State of Pennsylvania?

A. Yes.

Q. Outside the State of Ohio?

A. Yes, sir.

Q. How about the Lorain Company? State whether or not they were competitors of your company, at the time it was taken over by the National Steel Company.

A. To a limited extent, yes, sir.

Q. Did you say that you continued with the National Steel Company or not?

A. I was the president of the company at the time of the sale and operated the plant about a year after they acquired it.

Q. State whether or not, during the time you were with the National Steel Company, this competition of which you have spoken in interstate commerce between the Aetna Iron & Steel Company and the Carnegie Company and the Lorain Company continued in the same respect between the National Steel Company and the Carnegie Company and the Lorain Company.

A. It did.

Q. After you left the National Steel Company, where did you go?

A. I was elected first vice-president of the Sheet Steel Company.

Q. You still kept in touch with the business, did you, and continued to have a knowledge of the business?

A. I hope so.

Q. I have no doubt you did, or you would not be where you are now. State whether or not, after the formation of the United States Steel Corporation in 1901, there was competition between the National Steel Company and the Carnegie Company, and, if so, in what respects.

A. I should say there was limited competition.

Q. There was competition?

A. Limited competition, I say.

Q. That is a very vague word.

A. Perhaps I can explain. I will try to make it clear.

Q. I wish you would.

A. I say limited. You will remember there was formed the Steel Hoop and the American Sheet Steel. The formation of those companies, as I understood it at the time intended, was to balance up National Steel so as to make it more nearly self-sustaining. In other words, the National Steel was the raw producing steel company to supply the crude material to the Sheet Steel and the Steel Hoop and the Tin Plate Companies. Consequently it did not have much in excess in the way billets to sell in the open market in competition with anybody.

Q. State whether or not at the time prior to its acquirement by the United States Corporation it did sell billets at times in the open market?

A. I believe I have stated that. Prior to the formation of the Steel Corporation it did sell.

Q. From time to time?

A. Yes, it sold some steel for a period, I believe.

Q. In competition with the Carnegie Company?

A. Yes, sir.

Q. And in competition with the Lorain Company?

A. Yes, sir.

Q. And interstate competition, about which we are talking?

A. Yes. That was for a very limited period.

Q. Do you know whether or not the National Steel Company, between the time of its formation and the time of its acquirement by the United States Steel Corporation, manufactured any rails?

A. I do not. I would say not, however, to the best of my recollection.

Q. Mr. Topping, state whether or not you were a member of a syndicate which procured an interest in the stock of the Tennessee Coal & Iron Company?

A. I was.

Q. State whether or not that interest was a controlling one.

A. The interest in which I participated was a controlling one, yes.

Q. That is, it acquired a majority of the stock of that company?

A. Yes, sir.

Q. Name your associates in that syndicate. I believe it was called a syndicate, was it not?

A. I do not think I can from memory. There were quite a number of them.

Q. Name such as you can.

A. The principal members of it were L. C. Hanna; G. B. Schley; J. B. Duke; E. W. Oglebay; John W. Gates; Mr. O. H. Payne, of Cleveland; I believe that is his name.

Q. Did you mention Mr. Thorne?

A. I did not mention Mr. Oakleigh Thorne, but he was a member, and there were quite a number of others.

Q. Did you mention Mr. Gates?

A. I did. Those were some of the more prominent members.

Q. State whether or not before you went into that purchase you made any sort of investigation or examination or inquiry, or informed yourself as to the values of the property and the character of the venture upon which you were entering.

A. Personally I did not; but I saw reports of the mineral properties prepared by engineers, and I had a general knowledge from the reports of my associates, in whom I had confidence, as to what they had, and of what the property consisted.

Q. You mean by not having personal knowledge that you did not go on the property and make an examination?

A. Not at the time I took an interest in the property, no, sir.

Q. State what was your purpose in going into that with respect to selling the property on a speculation or developing it?

MR. LINDABURY: Objected to as irrelevant.

A. For the purpose of developing.

By MR. DICKINSON:

Q. For the purpose of developing the property?

A. For the purpose of developing. Of course with the idea of making money out of it.

Q. But not with the idea of at once marketing the property?

A. No, sir.

Q. State whether or not any of these men that you have mentioned as having been associated in the matter had had general experience in iron and steel lines.

A. Only three of them, so far as I know.

Q. Some of them had.

A. Yes, sir.

Q. Who were they?

A. Mr. Gates, Mr. Oglebay, and Mr. Hanna.

Q. Had Mr. Oglebay been in the iron business?

A. Yes, sir.

Q. For some length of time?

A. He had been in the iron ore business for a great many years and had been for a number of years rather intimately connected with the steel and iron business of the Wheeling district.

Q. Take Mr. Hanna. Had he or had he not been in the iron ore business?

A. The iron ore and blast furnace business, and coal.

Q. The transportation of iron ore?

A. Yes.

Q. And iron?

A. Iron—pig iron.

Q. Some of these men were practical men in that line of business, were they?

A. In what sense are you using the word "practical"? Do you mean technically so?

Q. I mean men who had had experience in those classes of properties.

A. If you use it in the sense of general experience, yes.

Q. That is the sense in which I am using it. I do not mean men who actually operated the furnaces.

A. That is what I wanted to get clear.

Q. Of what character of men were the others in respect to that business?

A. Some of them were professional men.

Q. Were some of them bankers?

A. Some were bankers.

Q. And some business men?

A. Some manufacturers and business men as a type, as a rule.

Q. What was the standing of these men at that time, down to 1907, generally, in the business world? Was it good or not?

MR. LINDABURY: Objected to as irrelevant.

By MR. DICKINSON:

Q. Just answer the question, Mr. Topping.

A. Their standing was high, so far as I ever had any knowledge of their standing in the business world.

Q. State whether or not they had a reputation of being successful men and men of financial strength.

MR. LINDABURY: The same objection.

A. That was their general reputation, to the best of my knowledge.

By MR. DICKINSON:

Q. Was that one of the considerations that had an influence with you in forming this association?

MR. LINDABURY: I note the same objection.

A. No, sir; it was not.

By MR. DICKINSON:

Q. Would you or would you not have gone into a syndicate of that sort with men who had the reputation of being financially weak?

A. I certainly would not, but I did not go in because they had that standing.

Q. I did not say "because." I asked whether that entered into it as one of the considerations.

A. I beg your pardon. I did not understand your question. Naturally it did.

Q. At the time, or about the time, Mr. Topping, that this syndicate was formed, what would you say would be a fair estimate of the difference in cost of producing a ton of pig iron at Pittsburg and a ton of pig iron at Birmingham, by the Tennessee Coal, Iron & Railroad Company?

MR. LINDABURY: That is objected to because it does not appear that the witness had expert knowledge on that particular subject.

By MR. DICKINSON:

Q. Can you answer that question?

A. You would have to put that question, Mr. Dickinson, rather more specifically, in order that I might reply to it properly. There is a vast difference in the different characters and kinds of pig iron. If you are making foundry iron and comparing the cost of foundry iron with Bessemer, or if you are comparing it with basic pig, it would be a very difficult——

Q. (Interrupting.) I did not hear the last part of your reply.

A. I cannot answer that question specifically as you put it, because you would be comparing possibly foundry iron with Bessemer pig iron or with basic pig iron.

Q. Did or did not the Tennessee Coal, Iron & Railroad Company sell any iron north of the Ohio River?

A. It did.

Q. Was, or was not, that iron sold in competition with iron made north of the Ohio River?

A. It was to the extent that we competed in our sales of foundry iron with other foundry furnaces, and where we sold basic iron for steel-making purposes it competed with that basic steel-making iron.

Q. There was competition between foundry iron and basic iron?

A. I am only trying to make clear to your mind that basic did not compete with foundry, and that foundry did not compete with basic.

Q. But foundry iron does compete with foundry iron?

A. Yes, sir.

Q. And basic with basic iron.

A. That is quite right.

Q. Taking the two kinds you have spoken of as competitors, I will first ask you about the foundry iron. What would be the difference in cost at that time, of producing a ton of foundry iron at Birmingham, with such properties as the Tennessee Coal, Iron & Railroad Company had, and their locations in respect to these several properties, as compared with the cost of producing that generally prevailed north of the Ohio River?

MR. LINDABURY: That is objected to because it does not appear that the witness had expert knowledge on that particular subject.

A. I can answer that question only in this way. I can tell you approximately the difference in cost that exists in our own furnaces north and south.

By MR. DICKINSON:

Q. Answer that, please.

MR. LINDABURY: That is objected to as irrelevant.

A. About \$3.50 a ton. It would vary somewhat from \$3 to \$3.50.

By MR. DICKINSON:

Q. Mr. Topping, what was the reason of that difference in cost? Please explain that.

A. There are a great many things entering into it.

Q. What are the main elements?

A. The principal elements would be the reduced cost of assembling raw materials for conversion.

Q. Take the foundry iron produced north of the Ohio River. From what sources were those elements assembled?

A. From the Lake region.

Q. That is, the iron ore was brought from the Lake region.

A. Yes, sir.

Q. What was the distance?

A. I do not know that I can tell you accurately.

Q. Not accurately, but approximately.

A. I could express it better in freight rates.

Q. Express it that way, if you will, then.

A. The freight rate would be, to most of the districts in the north, an average of about \$2.20, roughly, as a general statement of freight, or the cost of assembling iron ore from the north to the furnace districts of Ohio and Pennsylvania.

Q. Are you speaking of all the elements or just the one element of ore?

A. I am speaking about ore.

Q. What would the corresponding freight rate be in the Birmingham district?

A. About 12½ cents a ton.

Q. That is 12½ cents a ton against how much, did you say?

A. \$2.20. That is based on the old freight rate of 80 cents, and 60 cents by water, and about 85 from the lower lake ports to the point of consumption. That would make \$2.25. Correct that figure to read \$2.25.

Q. You mean, on the rate that was in existence up to a recent change, which was made a few months ago?

A. Yes, sir.

Q. Up to what time approximately had the rate of which you speak existed?

A. It existed up until the opening of navigation this year.

Q. At that time the change was made?

A. Yes, sir.

Q. How long prior to that had these relative rates existed?

A. I do not know. I think they had existed for a great many years.

Q. At any rate, had they existed at the time you purchased your interest in the Tennessee Coal, Iron & Railroad Company?

A. They were substantially as they are today, I believe, with the exception of this last change.

Q. Did they exist substantially the same at the time the Tennessee Coal, Iron & Railroad Company was taken over by the United States Steel Corporation?

A. That is my best recollection.

Q. You have given this difference in freight rates as being

one of the controlling elements. State whether or not the reason for that difference was the distance of the furnace from the sources of supply in respect to the two districts?

A. It was.

Q. As to the Tennessee Coal, Iron & Railroad Company, how far was the average haul, if you can answer that, of the ore to the furnace?

A. The mines were located at different distances from the Ensley plants.

Q. What was the maximum haul, about?

A. All their operations, I should say, were within the 25-mile limit; probably 10 or 12 miles would represent somewhere near an average, as a rough approximation.

Q. That applied to their coal supply?

A. Yes, sir, and limestone and everything.

Q. The limestone, too?

A. Yes.

Q. What about coke?

A. Naturally the coke would be in the district of the coal production?

Q. So the ore, coal, limestone and coke, are the principal elements that go into the making of the iron?

A. Naturally.

Q. I mean as far as the elements are concerned?

A. Practically so.

Q. And they were all within a radius of 20 miles?

A. Or less.

Q. I will ask you, Mr. Topping, whether or not in any other section of the United States, as far as you know, the same advantages prevail as prevail there in respect to the juxtaposition of the elements which go into the products of iron?

A. Not that I know of.

Q. State whether or not, Mr. Topping, in the Birmingham district, at the time you purchased this property, and at the time the Tennessee Coal, Iron & Railroad Company was acquired by the United States Steel Corporation, iron could be made there more cheaply than at any other part of the United States. I mean foundry iron and basic iron.

A. I doubt if that is so.

Q. In what other part of the United States could it be made more cheaply than in the Birmingham district?

A. It depends with whom you make your comparison.

Q. If you have any knowledge of any section of the country where it could have been made more cheaply at those periods than it was made by the Tennessee Coal, Iron & Railroad Company, please state where it was.

A. I doubt if it has been made any cheaper than it has been made in Chicago by the Corporation's furnaces.

Q. When were those furnaces established?

A. Oh, years ago, the old Illinois furnaces.

Q. Four years ago?

A. I say they were established years ago.

Q. I beg your pardon. I thought you said four years ago.

A. Years ago.

Q. What furnaces were those?

A. Their South Works furnaces; I do not know how they designate them, whether by number or alphabetically.

Q. By whom were they owned?

A. Formerly by the Illinois Steel Company?

Q. Where do they get their ore?

A. From the lake region.

Q. Where do they get their coke?

A. They are making their own coke on the ground at the present time, I think.

Q. No; I mean in 1907.

A. I think Connellsville, and probably some from the Pocahontas district.

Q. Where do they get their limestone?

A. That I do not know.

Q. Do you say, Mr. Topping, that in 1907 at that mill, with the transportation for those distances, they were making foundry iron—

A. They do not make foundry iron at all.

Q. What iron were they making, basic iron?

A. Steel—making iron.

Q. Basic?

A. Bessemer and basic.

Q. The Tennessee Coal, Iron & Railroad Company did not make Bessemer, did they?

A. No; they made basic.

Q. Was this company at that time making basic iron more cheaply than the Tennessee Company was making it?

A. I would not be surprised if they were making it as cheaply.

Q. Have you ever seen the cost sheets at which this Illinois company was making?

A. I have not.

Q. Now state what it cost them to make basic iron in 1907. Do you know?

A. I do not remember.

Q. You do not remember?

A. I do not.

Q. Do you know any other place in the United States where basic iron or foundry iron could be made approximately as cheaply as in the Birmingham district?

A. Outside of the Corporation I should say not.

Q. Outside of the Corporation—what do you mean by that?

A. Outside of the Steel Corporation.

Q. Do you mean to say that at other points, besides the one that you have mentioned in Illinois, the Steel Corporation in 1907 was making basic iron more cheaply than it could be made in the Birmingham district?

A. I said I should be surprised if they were not.

Q. You would be surprised if they were not?

A. Yes.

Q. Are you willing to say as a matter of fact that they were?

A. I stated a minute ago I did not know what their costs were at that time; I do not remember; but I have seen their cost sheets.

Q. You cannot state?

A. I did not state that.

MR. LINDABURY: You are unintentionally leading. You asked for his expert judgment as to whether it could be made anywhere else as cheaply as at Birmingham, and he said, yes, he thinks it could.

MR. DICKINSON: I am asking him for his knowledge.

MR. LINDABURY: But you were asking him for his opinion, and now you are cross-examining him as if he had testified to his knowledge.

MR. DICKINSON: That is perfectly legitimate.

MR. LINDABURY: That is not fair to him.

MR. DICKINSON: I mean to be fair to him.

MR. LINDABURY: You do not mean to be unfair; but I say he answered according to his opinion and you are now going upon the theory that he answered from knowledge.

THE WITNESS: That is what I was doing.

By MR. DICKINSON:

Q. How is that?

A. I understood your question to ask for my opinion. I told you definitely I did not have the exact knowledge of the costs, although I had seen the cost sheets.

Q. You have seen them?

A. As president of the other company, we naturally exchanged cost information, but I do not remember what the cost was.

Q. Did you exchange cost information in 1907?

A. I was not president in 1907.

Q. Well, did you see cost sheets of 1907 of the United States Steel Corporation?

A. I think I did.

Q. Who showed them to you?

A. I do not remember.

Q. Where did you see them?

A. In my own office.

Q. By whom were they furnished?

A. I do not know. We sometimes get information from each other that we do not know about.

Q. What do you mean by that?

A. I mean to say our various employees are exchanging notes with other employees and bringing us information from our competitors. In that way we get information. That is our business.

MR. LINDABURY: A branch of it.

THE WITNESS: To find out what our competitor is doing.

By MR. DICKINSON:

Q. What was the financial condition of the Tennessee Coal, Iron & Railroad Company as to solvency at the time it was taken over by the Steel Corporation?

A. I regarded it as solvent.

Q. At the end of December, 1906, what were the net profits of that company for dividend purposes?

A. I could not say accurately or definitely, but I should say about a million and a half approximately, as I remember it; perhaps less.

Q. What was their net working capital? Had you finished?

A. I had.

Q. I do not mean to interrupt you at any time, sir.

A. No, sir.

Q. What was their net working capital over and above their current liabilities?

A. At the time of the sale of the property?

Q. Yes.

A. Something like two million, I think; but in that statement, I did not take into account contingent liability of unfinished contracts. As against that we had unpaid subscriptions for capital stock that had been subscribed that would have more than offset the unpaid balance against construction contracts; but in making that statement as to the net working assets it is customary never to set contracts out as a fixed liability, but they are considered a contingent liability.

Q. The contracts were usually on a profitable basis, were they not?

A. Construction contracts could not be construed as a profitable contract until you realized on the construction.

Q. You mean the contracts you had for building?

A. Yes. I am only stating the contracts were considered a contingent liability and not included in that two million net assets, and were offset by unpaid subscriptions for capital stock.

Q. Offset that liability?

A. Yes, sir; substantially so.

Q. Substantially so, and that left the surplus of which you speak?

A. Yes.

Q. Did you take charge of this plant upon the formation of the syndicate and the purchase?

A. I did.

Q. In what position?

A. I was chairman of the company and its chief executive officer.

Q. State whether or not you began to improve the property at once.

A. We did, after a reasonable length of time.

Q. State generally, Mr. Topping, what changes you made in the property and what was their character in respect to the promotion of efficiency.

A. Rebuilding the steelplants, reconstructing the furnaces in part—not the entire group—but I think there were three of them reconstructed; rearranging the yards; reconstructing the Birmingham Southern Railroad, changing the grade and curves and bridges; rebuilding the rail mill and the rail-finishing department; general rehabilitation of the property.

Q. General rehabilitation and putting it in an efficient condition?

A. To the extent that we had appropriated money for that work. But that was only a partial rehabilitation because the job was not complete.

Q. At the time you parted with it?

A. No, sir.

Q. It was in process, however, of being done?

A. In process.

Q. From the time the syndicate acquired this property, to the time it was acquired by the United States Steel Corporation, state approximately how much had been spent in improving the property?

A. I should say approximately \$8,000,000.

Q. How had that money been raised?

A. By stock subscription.

Q. Among the existing stockholders?

A. Yes, sir.

Q. By an increase of the stock?

A. An increase of the stock, selling it at par.

Q. At the time the syndicate purchased it, what was the amount of the stock?

A. \$29,500,000, I think.

Q. I will ask you to refresh your memory and state whether or not it was not about twenty or twenty-two million dollars at that time?

A. At the time of sale?

Q. No, at the time the syndicate purchased it.

A. Yes, sir; I think that is right. I misunderstood your question.

Q. And then at the time you parted with it by subscription it had been brought up to \$29,000,000?

A. \$29,000,000.

Q. And the difference in the stock had been paid in at par?

A. Yes.

Q. And had been expended in betterments and improvements?

A. Absolutely, every dollar.

Q. You produced at the hearing before the Stanley Committee a statement of the last fiscal year of your operations. Will you file as a part of your statement in this case, a copy of that, unless Mr. Lindabury is willing to verify this and put it in.

MR. LINDABURY: I did not hear you, as I was reading something.

MR. DICKINSON: I asked whether he might put in as a part of his testimony a part of his deposition in the Stanley Committee hearing, a statement of the last fiscal year of the operations of the Tennessee Coal, Iron & R. R. Company.

THE WITNESS: No; that is not that statement—

MR. DICKINSON: You say it is not a statement?

THE WITNESS: Not of that character. A representation as to the condition of the property, as a basis for the purchase or sale.

MR. LINDABURY: What page is that?

MR. DICKINSON: Page 1230 of the Stanley Committee hearings. It is headed here "Tennessee Coal, Iron & Railroad Company. Condensed balance sheet and income account as of September 30, 1907."

THE WITNESS: That is true. That is the basis on which the sale of the property was made.

MR. DICKINSON: What I want to do is to make that a part of your testimony here. We can do that, Mr. Lindabury, either by agreement, or I can have Mr. Topping recalled, and have him file a statement. Are you willing for him to examine this and see if it is correct.

MR. LINDABURY: I have no objection to his examining it. I want to see what he said about it. I did not know you were going to examine him on this subject, and consequently I have not had the time to read up his testimony.

MR. DICKINSON: I did not want to call him twice.

MR. LINDABURY: I understand. That is simply my apology for not knowing to what he testified.

MR. DICKINSON: We have subpoenaed the document, but if we could get it this way, it would be less trouble for all parties.

MR. LINDABURY: I understand from his evidence that this statement was submitted to the purchasers at the time of the sale.

THE WITNESS: As the basis of a representation I made to the purchasers as to its condition at the time, substantially its condition at the time the property was sold and the stock acquired. I think this statement is substantially correct.

MR. LINDABURY: You submitted this to Mr. Ledyard?

THE WITNESS: I did not submit it to Mr. Ledyard. It was submitted to Judge Gary as a basis on which the property was valued.

MR. LINDABURY: What I am interested in knowing is whether or not you submitted this, no matter for what cause, or with what object, to any of those gentlemen at the time the purchase was made?

THE WITNESS: I did not.

MR. LINDABURY: Pending the negotiations?

THE WITNESS: I did not.

MR. LINDABURY: When was it you did it?

THE WITNESS: When the property was under negotiation with the Steel Corporation.

MR. DICKINSON: That is what you mean, is it not?

MR. LINDABURY: That is what I mean. At the time the purchase was made.

THE WITNESS: Oh, I beg your pardon. Mr. Ledyard did

not have anything to do with it, because he did not participate in this deal.

MR. LINDABURY: I do not care who it was, if it was someone of the persons you were dealing with at the time.

THE WITNESS: Yes; that is right.

MR. LINDABURY: I did not quite get your question.

MR. DICKINSON: I do not see any reason, if he says this is correct, why it should not go in as part of his testimony.

THE WITNESS: I think it is exactly correct, except I see one thing. I see the bond obligation of the company is not listed in that statement, the outstanding bonds. It looks like a clerical omission, but so far as I remember the statement, it is correct.

MR. LINDABURY: Let the witness correct it. Put it in, with the correction you desire to make.

THE WITNESS: My recollection is that there were \$14,500,000 of outstanding bonds at that time.

By MR. DICKINSON:

Q. \$14,500,000 of outstanding bonds?

A. Yes. With what exception I think it is substantially correct.

MR. LINDABURY: Let us have an understanding about this, and I will ask the stenographer not to take it down.

(Informal conference between counsel followed.)

By MR. DICKINSON:

Q. State whether or not you submitted at the Stanley hearing a statement of the Tennessee Coal, Iron & Railroad Company, condensed balance sheet and income account, as of September 30, 1907?

A. I did.

Q. And you have examined pages 1230 and 1231 of the record of the Stanley Committee hearing, where this statement purports to be printed?

A. Yes.

Q. Is there or is there not an error in the tabulation of that statement?

A. It is correct with the exception of the omission of the outstanding bonds, to the amount of \$14,562,000, I believe.

Q. That appears to be a misprint?

MR. LINDABURY: Not a misprint, but an omission.

A. It is an omission.

Q. That is an omission?

A. Yes, because my statement covered that completely.

MR. LINDABURY: Would you mind letting him say that this inclusion is necessary to make the footing correct?

By MR. DICKINSON:

Q. Yes, I want to ask you that question. On page 1231, after putting the \$14,562,000 under the item, "bonded debt", would that make the footing \$52,366,874.06, as it appears on page 1231?

A. It would appear so, yes, sir.

Q. Did you or did you not give this statement to Mr. Gary?

A. I think I handed it to Mr. Filbert.

Q. I understood you to say a while ago that you gave it to Mr. Gary.

A. I did say that, referring to him as the Corporation; but I think Mr. Filbert took charge of the details. He was present. Mr. Filbert was the comptroller, and he would naturally take a statement of that kind.

Q. This statement, with the correction you have made, is a correct representation of the condition of the company at that time, is it?

A. To the best of my knowledge and belief, yes.

Q. You would not have presented it that way unless you had confidence in it?

A. It was accepted as a basis for the settlement, and there were no charges, debits or credits, made against it in the transfer of the property.

Q. You believed it was substantially correct?

A. It was thereafter verified and substantially accepted.

MR. DICKINSON: Instead of producing the original statement, the stenographer may copy the statement as it appears on pages 1230 and 1231 of the record of the Stanley Committee hearings. Let us have that agreed, that he may have that

copied, supplying the omission of the bonded indebtedness, and subject to correction by either side.

MR. LINDABURY: That is agreed.

MR. DICKINSON: Subject to correction by either side.

MR. LINDABURY: Yes.

(The portion of the testimony of the witness, John A. Topping, as given before the Special Committee of the House of Representatives of the United States, referred to, given August 3, 1911, and with the correction stated, is as follows:)

“Tennessee Coal, Iron & Railroad Co. condensed balance sheet and income account, as of Sept. 30, 1907.

“ASSETS.

“Land, property, and construction account..	\$44,815,951.45
“Proprietary land companies and other	
“investments	901,194.66
“Deferred charges to operations.....	51,217.31
“Trustees of bond sinking funds.....	41,831.96
“Treasury securities	1,076,880.00
“Quick assets:	
“Cash	\$424,352.23
“Bills and accounts receiv-	
“able	2,559,693.74
“Inventory accounts.....	2,495,752.71
	52,366,874.06

“LIABILITIES.

“Capital stock, common....	\$29,072,292.00
“Capital stock, preferred....	248,300.00
“Capital stock, common stock	
“subscription	263,473.00
	\$29,584,065.00
“Bonded debt (outstanding, less redeemed	
“and alive in sinking fund):.....	14,562,000.00
“Guaranteed securities.....	790,000.00
“Reserve funds.....	244,701.36

"Depreciation funds.....	\$1,276,611.38
"Current liabilities,.....	3,437,689.30
"Collateral purchase notes.....	826,386.90
"Profit and loss surplus.....	1,645,420.12
	52,366,874.06
"Net earnings, 9 months ending Sept. 30, 1907	1,482,282.28
"Net earnings, 9 months ending Sept. 30, 1906	699,862.75
"Gain 1907 over 1906.....	782,419.53
"Per cent of gain.....	112
"Net working assets.....	2,042,109.38"

By MR. DICKINSON :

Q. State whether or not at the time the stock of this company was sold to the United States Steel Corporation, you had on your books orders for various supplies?

A. Do you mean that exactly as you put it?

Q. Yes; I mean that question as I put it.

A. You said various supplies. What do you mean by supplies?

Q. I will change it to "products."

A. That is better. I did not think you meant just what you said. Supplies are what we consume. Commodities are what we sell. Do you refer to rails, and so forth?

Q. Yes, what you were selling?

A. We had a fair amount.

Q. State whether or not there had been any increase over the period immediately preceding the same during which you had made these sales and produced these orders for your products; whether there was a larger tonnage?

A. We produced a much larger tonnage during my administration than was produced during the preceding administration, because we derived some benefit from improvements which were completed.

Q. Your business was increasing, was it not?

A. Our business was increased by the increased capacity of production.

Q. You were producing a larger amount than you were at the time you took the property over?

A. We were.

Q. Your business was increasing as a company, was it not?

A. Yes, naturally, under those conditions, it would have to.

Q. Were the prices, at that time, on the average, better than they had been for some time past?

A. That was during the period of the 1907 boom. We had a large amount of undelivered material sold at high prices, both pig iron, coal, coke and rails, but the price, during 1908, very promptly went off, as you will remember.

Q. I am not asking about 1908. I have not asked you about 1908.

A. What period are you talking about?

Q. I am asking about 1907, the time when the United States Steel Corporation acquired your stock; whether or not at that time the tonnage was not greater and the average prices were not higher than they had been for the year preceding?

A. They were.

Q. State whether or not you had any rail orders at that time, and if so, please state approximately the amount of them?

A. I think we had somewhere between 300,000 and 400,000 tons on the books. That is my recollection.

Q. At what average price was that?

A. About \$29, I think.

Q. Had you orders for pig iron, and if so, about what was the tonnage?

A. I would not be certain about the tonnage of pig iron, but it was probably 60,000 tons, or thereabouts.

Q. I will ask you, by way of refreshing your memory, if you cannot remember whether or not it was approximately 97,000 tons.

A. If I stated that before the Stanley Committee—I gave that from a memorandum of our orders—I would say that that was correct.

Q. Can you now remember whether or not that was approximately correct?

A. I think so.

Q. Were you sellers of coal.

A. Yes.

Q. Commercial coal?

A. Yes.

Q. To a large or small extent?

A. Large; we were the largest producers in the South.

Q. Did you have contracts with railroads for the consumption of your coal?

A. Yes.

Q. Was the price at which you were selling it profitable or not?

A. Yes, our coal department made money every year.

Q. Were you making a profit on both your pig iron and coal?

A. Yes.

Q. Has it a substantial profit?

A. Yes.

Q. At the time of the sale of this company to the United States Steel Corporation state whether or not there was any other open hearth mill in the United States that you know of making open hearth steel?

A. I think there was.

Q. Was there any other in the Birmingham district except yours?

A. There was not.

Q. At what other points were there open hearth mills?

A. The Bethlehem Steel Company were making open hearth rails, I think, at that time, at Bethlehem, Pennsylvania.

MR. SEVERANCE: You did not ask about open hearth rails, did you? You said open hearth steel, did you not?

MR. DICKINSON: I said open hearth mills.

THE WITNESS: Then I had better change my reply.

By MR. DICKINSON:

Q. What would your reply be?

A. There were a great many open hearth mills, as you express it, open hearth furnaces.

Q. Now, I will ask you about rails: In 1907, were open hearth rails made anywhere else in the United States except in the Birmingham district?

A. I think so.

Q. Where?

A. I think the Bethlehem Steel Company started to make rails at about that time. My recollection is that they were selling open hearth rails at the time we were.

Q. State whether or not in the year 1907, prior to the sale of the stock of the Tennessee Company to the corporation, the Harriman Lines had given the Tennessee Company an order for open hearth rails, and if so, what was the extent of that order?

A. They did; about 150,000 tons.

Q. How long was that order put in before the transfer of this stock, approximately?

A. I would say possibly six months, approximately six months.

Q. Was this the first order that you had had?

A. No, sir; we had had a number of prior orders.

Q. From the Harriman Lines?

A. Yes, sir.

Q. For open hearth rails?

A. Yes, sir; but for smaller amounts.

Q. What were those sales of small lots made for, if you recollect?

A. The sales of small lots were naturally made for the purpose of introducing the rail to the consumer.

Q. For the purpose of letting them make a trial of the rail?

A. Yes, sir; and to satisfy them as to the quality of the steel.

Q. After you had made those sales of small lots for that purpose, you received an order for 150,000 tons at one time?

A. Yes, sir; we did, as the result of negotiations, and following the smaller sales.

Q. State whether or not on December 31st, 1906, you

made an annual report of the Tennessee Coal, Iron and Railroad Company.

A. I did.

Q. While you were with that company was it, or was it not, customary to make annual reports?

A. It certainly was, as with all other companies with which I have been connected.

MR. DICKINSON: I will strike that question out and ask another question and come back again to that.

By MR. DICKINSON:

Q. Mr. Topping, in December, 1906, state whether or not by that time you had acquired a personal knowledge of the extent and character of the iron and coal properties and limestone properties owned in fee simple by the Tennessee Coal, Iron and Railroad Company.

A. I considered I had.

Q. In the extent of its possessions of raw material, how did it at that time compare with other large companies of this country?

A. I think it was the second largest holder of minerals in the United States.

Q. Which was the largest?

A. U. S. Steel.

Q. How did it at that time compare with other iron or steel producers in the cost of assembling its raw materials for manufacture?

A. It had no advantage over its competitors in that particular district.

Q. But outside of that district?

A. It had some advantage, but had the disadvantage also of reaching the market.

Q. I am not speaking now of reaching the market. The question was confined to manufacture.

A. The cost of assembling was low.

Q. How?

A. The cost of assembling was low, naturally.

Q. What was estimated then by you, from your knowledge of those properties, to be the amount of tons of iron

ore then available for use in the manufacture of iron, according to the then known standards of the science?

MR. LINDABURY: Objected to as irrelevant.

A. I did not make the estimates personally at all, Judge Dickinson. They were made by our mining engineers in charge of the iron ore department.

Q. You knew about the acreage, did you?

A. We knew about the acreage, and we knew about our yield per acre, and in that way I satisfied myself that the reports were substantially correct before I made them, of course.

Q. What was the amount, according to the best of your judgment?

A. About 750,000,000 tons.

Q. Of iron ore?

A. Yes, sir.

Q. And how much of coal?

A. Two billions, approximately.

Q. State whether or not any of this coal was of such a character as made it available for the manufacture of coke?

A. Mostly all coking coal.

Q. State whether or not this iron was of a self-fluxing character?

A. Part of it was and part of it was not.

Q. Please explain, Mr. Topping, what is meant by self-fluxing.

A. Iron ore that requires no limestone to flux it. In other words, it is an iron ore carrying sufficient lime in combination to do without limestone.

Q. State whether or not this ore was well suited for the manufacture of high-grade foundry pig iron.

A. It was.

Q. And how as to the production of basic pig iron for making basic open hearth steel.

A. It could be used for that purpose.

Q. Economically?

A. Reasonably so.

Q. It was used for that purpose, was it not?

A. It was.

Q. And is now?

A. And is now, but is not as economical as northern basic iron. That is what I mean by my remark "reasonably so."

Q. You mean the iron itself?

A. The basic iron, Judge, carries about one per cent of phosphorus, and in our practice in the North, phosphorus is found anywhere from .10 to .20, and it takes time to eliminate phosphorus in the open hearth furnace. The more you have, the more time it takes and the less the output of the furnace.

Q. Your answer, however, was confined merely to the character of the ore, was it not?

A. The ore itself.

Q. And you left out of consideration the question of transportation and of location in relation to other ingredients in making iron, did you not?

A. Just repeat your question and see if I get it clearly.

Q. You were speaking merely of the character of the ore?

A. No; I was speaking about the character of pig iron when produced from the ore and as to its operations in the open hearth furnace.

Q. How is that?

A. I was speaking about the character of the pig iron when produced from the ore with respect to comparing it with basic iron.

Q. The iron itself?

A. Yes. And it is not so desirable and cannot be sold for the same price north. Therefore I qualified my remarks.

Q. In answering that question, you were not, then, considering the question of the manufacture of iron, the question of the cost of manufacture?

A. I was not; I was talking about the product itself when manufactured.

Q. That is what I understood. What was the difference in price between the southern basic pig iron and the northern?

A. The differentials varied somewhat, depending upon the supply and demand, but at times as much as a dollar a ton against southern basic iron in northern markets, and I believe never less than 50 cents.

Q. What markets were you reaching with the products of

the Tennessee Coal, Iron & Railroad Company at the time it was taken over by the United States Steel Corporation?

A. To what particular product do you refer?

Q. Take pig iron and rails.

A. I would have to answer that question in a different way.

Q. I will put the question this way: What markets were you reaching at the time your company was taken over by the United States Steel Corporation, that is to say, where were you selling your pig iron and rails, and what zone were you reaching?

A. We were selling rails in the southern market exclusively, the South and Southwest; we were selling pig iron all over the United States; we were selling coal exclusively in the South and coke exclusively in the South.

Q. What proportion of your pig iron was sold north of the Ohio River?

A. I should say roughly 60 per cent; possibly more.

Q. State whether or not the basic process of making steel has made available a large amount of ore that would not otherwise have been available for making steel?

A. It has.

Q. What are the advantages, if any, Mr. Topping, of steel made by the open hearth process?

A. For some purposes it has no advantages; ~~for~~ others it has.

Q. State what it has and then state what it has not, so you will give both sides.

A. It is too broad a question, Judge Dickinson, to answer in that way, I am afraid.

Q. Under the Bessemer process can you reduce the phosphorous at all?

A. No. For some uses you do not care anything about the phosphorous.

Q. What is the effect of the phosphorous upon steel?

A. It makes it brittle and hard.

Q. Under the basic process can you reduce the phosphorous?

A. We can.

Q. To just the quantity that you want?

A. The quantity you want is nil.

Q. It is nil, is it?

A. Eliminated. We do not get nil, altogether.

Q. You can eliminate substantially all of it, can you?

A. You can if you take enough time.

Q. State whether or not the steel made by the basic process is a more regular steel and a better quality?

A. For many purposes that is true. For some purposes you cannot use it at all. You cannot use basic steel to manufacture pipe, for instance; that is, merchant pipe. You cannot answer that question directly and specifically; it covers too broad a subject.

Q. I will ask you whether or not you can refresh your memory and whether or not you did answer that question. Were you not asked by the Chairman in the Stanley Hearings "What are the advantages of this steel made by the open hearth process?" And did you not answer:

"Well, the general advantage is in this, that you cannot reduce by the Bessemer process phosphorous below the percentage at which you start in on the ore. In fact, you pick up added quantities of phosphorous in the process of manufacture with limestone and coke, whereas in the basic process it is only a question of time when you can eliminate substantially all the phosphorous. And by the basic process you get a more regular steel and better quality, due to the fact that phosphorous is not an element that adds to the quality, but the reverse of that in its general influence. It makes it brittle."

A. I made that statement, yes, sir. There is nothing in that statement in conflict with my present one.

Q. And you make substantially the same statement now?

A. I do as a general proposition. But there is nothing in that statement that is in conflict with the one I just made prior to it. Read the record.

Q. You see we do not know as much about iron as you do, and sometimes our views are a little vague—at least mine are.

A. What I mean to make clear is this: There are so many purposes where the question of the quality of the steel, the character of the steel used, would not qualify Bessemer, and for other purposes the reverse is true, and there is nothing inconsistent in the two statements. I made the statement

to which you refer, I remember very well. In the manufacture of rails I think open hearth steel is well suited for that purpose.

Q. How many thousand acres of mineral lands in Tennessee, Georgia and Alabama did the Tennessee Company have at the time its stock was sold to the Corporation?

A. I do not remember.

Q. I will mention a figure to you and ask if that—

A. A great many thousand acres.

Q. Something over 500,000 do you recollect, about that?

A. I would not be surprised if that was the correct figure; whatever it states.

Q. You would not say it?

A. I do not remember.

Q. How many developed and active iron ore mines did they have?

A. I do not remember the exact number.

Q. State whether they had as many as 15 or 18?

A. There are certainly over a dozen of them, different slopes.

Q. How many coal mines did they have?

A. That I do not remember exactly.

Q. Did they have as many as 20?

A. They might have had.

Q. What is the best of your recollection on that, Mr. Topping?

A. Twenty possibly.

Q. How many blast furnaces did they have?

A. I think there were only 10 that were called active.

Q. Counting those that were active and those that were inactive, how many did they have?

A. Well, let us see: 13, in my recollection.

Q. I will ask you to please think again and see whether or not it was 16.

A. There were three of them in Tennessee that were practically in the scrap heap and never operated by me and never have been since.

Q. There were 13 in Alabama, were there?

A. Yes, sir.

Q. And three in Tennessee that were not operated?

A. Yes, sir.

Q. That would make 16 in all?

A. Yes.

Q. State whether or not the Tennessee Coal, Iron and Railroad Company owned some land companies?

A. They did.

Q. What were the land companies?

A. Ensley Land Company, and then they had two or three small land companies outside of that. No special value attached to those land companies except the one, the important one, the Ensley Land Company.

Q. Were its holdings extensive in lands?

A. The Ensley Land Company was formed for the purpose of developing the town of Ensley, and most of the property, a large part of it, has been sold out in town lots to its present owners; there was a certain equity there; just what it was worth I could not tell you. We did not attach much importance to it as a valuable asset.

Q. Did it not own large tracts of land at that time?

A. It had owned, but it had mostly been sold.

Q. But I mean at the time.

A. They did not.

Q. The time that you acquired it?

A. They did not.

Q. Do you mean to say the value of that was negligible at that time, in a transaction of that character?

A. We did not attach very much value to the Ensley Land Company property.

Q. Did the company own and control the stock of a railroad company?

A. They owned it entirely?

Q. You mean the property?

A. The property. We bought it physically.

Q. Was that or not a subordinate company—the Birmingham Southern Railroad Company?

A. Yes. At the time we bought the property we did not own the company. I bought the property from the L. & N. Railroad and the Southern Railway, at the time we took charge.

Q. You bought the property itself?

A. Bought the property itself.

Q. What was the length of that railroad?

A. It was a short road. Its chief value was due to the terminal facilities. There were something like 100 miles of track all together, of which 15 or 20 miles was main line track.

Q. Did that connect the various mines and plants in the Birmingham district?

A. It did.

Q. With all the divergent trunk lines?

A. It did.

Q. Did you have terminal property?

A. We had. In the City of Birmingham——

Q. Was that valuable property or not?

A. Reasonably so, yes, sir.

Q. What was the capacity yearly of the blast furnaces of the Tennessee Coal, Iron & R. R. Company at the time this stock was sold to the United States Steel Corporation?

A. I do not remember exactly our figures. Something over a million tons.

Q. What was its ingot capacity about the same time?

A. At the time we secured it?

Q. Yes.

A. We had not developed our steel ingot capacity to a point of demonstration because the plant was a new plant, but not quite ready for operation.

Q. What was the calculated capacity of it?

A. A half-million tons.

Q. When you left the property, how many of these blast furnaces had been reconstructed?

A. Four, I think.

Q. I will ask you whether or not it was three.

A. We had three completely rebuilt and in the fourth furnace new stoves, and everything reconstructed except the shell itself, according to my recollection.

Q. Had you or had you not put in a new power plant?

A. Yes.

Q. And an electric power station?

A. We had.

Q. And an electric plant to operate machinery?

A. We had.

Q. Had you constructed a by-product coke plant?

A. We had not. That was built after we sold the property. There was a by-product coke plant on the property which we were operating under a lease from the Semet-Solvay Company.

Q. How far were your coal mines from your furnaces?

A. They varied.

Q. They varied from half a mile to six or seven miles?

A. Some mines were not more than a thousand yards from the blast furnace.

Q. How far were the most distant ones?

A. Possibly 25 miles.

Q. Where were you selling that coal?

A. That was commercial coal.

Q. But the coal that you used to make coke or used in making iron——

A. Most of that came out of the Pratt seam, not to exceed 12 miles.

Q. Was it that far?

A. It might have been in some cases. That was not very far.

Q. Where was Bessemer situated?

A. Beyond Ensley, about four and one-half miles, as I remember.

Q. Where was Ensley situated with reference to Birmingham?

A. About six miles from Birmingham, right up the valley.

Q. Was Bessemer further from Birmingham than Ensley?

A. Yes, sir.

Q. Did you have any furnaces at Bessemer?

A. Yes.

Q. How many?

A. Four.

Q. Did you have a rolling mill there?

A. A small one.

Q. At the time that you received this order, of which you spoke, for 150,000 tons, from Mr. Harriman, was there any other company in the United States making that quality of rail?

A. I think so.

Q. Where did you get that information?

MR. LINDABURY: He testified a little while ago about that

A. I stated a while ago, I think, that the Bethlehem Steel Company were making open hearth rails at the same time.

By MR. DICKINSON:

Q. I will read a question and answer that appears in the transcript of your testimony before the Stanley Committee on page 1236.

MR. LINDABURY: I object to that, as the witness' recollection cannot be refreshed by testimony on a former occasion nor can the examiner impeach his own witness by showing contradictory testimony given on a former occasion.

MR. DICKINSON: I am not trying to show contradictory testimony. I am simply trying to see if he can refresh his memory.

MR. LINDABURY: I object, because memory cannot, by any rule that exists anywhere, be refreshed in that way.

By MR. DICKINSON:

Q. Mr. Topping, do you recall what your memory was on this subject at the time you testified before the Stanley Committee?

A. I recollect the statement I made, but I think I was wrong when I made it. It has occurred to me since that I was wrong

Q. You think you made a statement—

A. I think the Bethlehem Steel Company was making open hearth rails at that time, although I made a statement contrary to that.

Q. What company do you say?

A. The Bethlehem Steel Company, at Bethlehem, Pennsylvania.

Q. Where did you get that information?

A. I did not get it. My recollection suggests to my mind that I made a mistake in my previous statement.

Q. On what do you base your statement; what are your sources of knowledge?

A. My source of suggestion?

Q. No. After you think now that they made it, why do you think so?

A. Because I recall that Bethlehem was competing with us for open hearth rails, and we were both making great claims of excellence for our quality, which was somewhat special to both of us.

Q. State whether or not, after you acquired this property and before you sold it, you took any steps toward opening up a water communication to the Gulf for the transportation of your products, and, if so, what those steps were?

A. We did, and the steps consisted in arousing public sentiment in our own district as to the advantage of slack water navigation, securing co-operation from those who might be interested in mineral holdings in the Warrior Basin, and we presented the subject in a proper way to the Rivers and Harbors Commission. I went to Washington in the interest of our own company and other manufacturers, and as the result of our work, and through the influence of other sections of the South who would be benefited by the improvement, we finally secured an appropriation for the Warrior River for slack water navigation.

Q. You have spoken of the Warrior basin. Is that the land adjacent to the Black Warrior River?

A. Yes, sir.

Q. What is the course of the Black Warrior River with reference to the Birmingham District?

A. It is contiguous to the coal supply of the district.

Q. Where does it run?

A. Its course is a meandering one. There is a big bend in the river.

Q. What is its general direction? Is it toward the Gulf?

A. Yes, sir; southeast.

Q. Is it a tributary of some other stream?

A. It is one of the rivers that flows into the Alabama. There are four or five names for the river at the headwaters—

Q. It flows into the Alabama River?

A. Yes.

Q. And the Alabama River empties into the Gulf of Mexico?

A. Yes.

Q. The idea was to make slack water navigation to reduce the cost of transportation to salt water?

A. Quite right.

Q. When was that project set on foot, if you recall?

A. I think that was in 1906.

Q. What was the expectation in connection with your company and the marketing of its product in connection with that development?

MR. LINDABURY: I object to that as calling for a mere speculation.

A. The purpose, of course, was to give us as many channels of carriage for distribution as we could get, and our thought was that it would be particularly beneficial to us in getting coal from that district to the Gulf markets. That was the most direct and primary benefit, and it would also, of course, open up to export an opportunity that would be rather exceptional.

Q. Was the Panama Canal talked of at that time?

A. I think it was in a general way.

Q. And the effect it would have upon the development of that section?

A. We did not consider it, however, in connection with the Panama Canal.

Q. Did this export you speak of refer to all your products?

A. It referred more particularly—I thought it would be immediately beneficial in opening up a broader market for our coal, because it would put us in direct connection with the New Orleans market.

Q. And iron also?

A. There is very little market for iron in that section.

Q. I mean when you got out to the seaboard, was any question of transportation to a foreign market involved?

A. At that time we had not investigated foreign market to any extent, but naturally we thought of the possibilities of export in connection with the means of reaching salt water.

Q. As applied to your pig iron and steel?

A. As applied to our pig iron and other products.

Q. What was the distance in that way to the Gulf port?

A. I do not know.

Q. What would have been the port reached? Mobile?

A. Mobile.

Q. Do you know about what that distance is?

A. I do not remember.

Q. I will ask you whether it is not approximately 150 miles. Do you recall that?

A. It may be.

Q. What is your best recollection about it?

A. I have no direct recollection, but I should say that it would be somewhere about that distance.

Q. What is the distance from Pittsburg to the seaboard, about?

A. Somewhere near 400 miles, I would think.

Q. I will ask you whether it is not nearer 350 miles?

A. It may be. It depends on what port you reach, of course.

(Whereupon, at 12:30 p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

JOHN A. TOPPING,

the witness under examination when the recess was taken, resumed the stand for further

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. State, Mr. Topping, whether or not at the time just preceding the sale of the stock of the Tennessee Company to the United States Steel Corporation you explained to Mr. Lewis Cass Ledyard anything in regard to the character of their property, its situation, capacity, value, and so forth.

A. I did.

Q. What was your purpose in making that explanation?

A. My purpose was to give him as near as I could a general description of the property as to its worth and character.

Q. Both prospective and present, as of that time?

A. Yes, sir.

Q. Did you go into an explanation of your mineral holdings?

A. In a very general way I did.

Q. And the fee ownership of the property?

A. I did.

Q. And your ideas of the value of the property?

A. I made no expression as to the value of the property.

Q. Did you go into your ideas as to the future development without speaking of the dollar value—the general prospective increase in value?

MR. LINDABURY: I suggest that you have him state what he told Mr. Ledyard.

By MR. DICKINSON:

Q. Mr. Topping, please state as fully as you can what you stated to Mr. Ledyard?

A. My statement to Mr. Ledyard was of a very general character, and was a result of a talk which I had with Mr. Schley, who was one of our large stockholders. I stated to Mr. Schley that I wanted to know, first, the purpose of my talk with Mr. Ledyard.

Q. I am not asking about that, as to what you stated to Mr. Schley, and I do not care about going into that. That is not necessary. Please just state, as nearly as you can what you said to Mr. Ledyard.

A. I can do that.

Q. Yes. Please do so.

A. I told Mr. Ledyard, in a general way, what we possessed in the way of minerals, what we had on top of the ground in the way of manufacturing facilities, and what I thought it was necessary to do in order to develop the property, in order to secure the greatest value out of it ultimately. I also spoke of its location and its advantages, as well as its disadvantages; my purpose being to give him a general idea of the property, so that he could form his own opinion as to its value. I made no representations as to my opinion of its value.

Q. Did you or not go into the question of the develop

ment of the South and the future markets that it would afford?

A. I do not recollect that I did.

Q. Did you discuss with him the question of export possibilities, through Mobile?

A. I do not think I did.

Q. Did you or not explain to him what you had done in the way of improving the property?

A. That I did.

Q. Were you at that time, Mr. Topping, desirous of selling your stock in this company?

MR. LINDABURY: You are speaking of Mr. Topping as an individual?

MR. DICKINSON: Yes.

THE WITNESS: Personally, I was not.

By MR. DICKINSON:

Q. Was what you said to Mr. Ledyard in any way induced by any desire on your part to part with your stock?

A. It was not.

Q. Where, Mr. Topping, are situated the manufacturing plants of the Republic Iron & Steel Company?

A. Our manufacturing plants are located at Birmingham, Youngstown, Ohio, St. Louis, Chicago, Moline, and Muncie, Indiana.

Q. State whether or not for the past several years that company has been a competitor of the United States Steel Corporation?

A. It has; in products that are common.

Q. As far as their products are common?

A. Yes.

Q. In what were they competitors?

A. In tubular products, merchant bars, and, at the present time, steel plates.

Q. How far back does that go,—the competition in plates?

A. We have made plates for about six months.

Q. Prior to that time you were not competitors in plates, were you?

A. No, sir.

MR. LINDABURY: Merchant bars, and what else, did you say?

THE WITNESS: Merchant bars and tubular products—pipe.

By MR. DICKINSON:

Q. Where are situated the ore properties of the Republic Iron & Steel Company?

A. Both North and South; Minnesota, Michigan, Wisconsin and Alabama.

Q. Where are your properties mainly, on which you rely for your supply?

A. Our largest source of supply is in the Missabe Range.

Q. How is that ore brought from the Missabe Range to the place where you convert it?

A. By rail and lake.

Q. State by what railroads it is brought.

A. There are three railroads.

Q. What are they?

A. The Great Northern and the two roads of the corporation.

Q. The two roads of the United States Steel Corporation?

A. Yes.

Q. Were the rates the same over the Great Northern and over the roads of the corporation?

A. From the same points of shipment, yes, sir.

Q. What were the railroad rates, up to the time when there was a reduction, recently?

A. Eighty cents a ton.

Q. From what point to what point?

A. From the mines to Duluth and Two Harbors.

Q. From Duluth how are they transported?

A. By vessel.

Q. By what lines of vessels?

A. There are a great many lines of vessels. We have some of our own vessels. We do not ship by corporation vessels. We have a small fleet of our own.

Q. Are there any roads except the Hill roads and the corporation roads that carry ore from those mines to the Lake?

A. Not serving our mines, no, sir.

Q. How many tones of ore does your company ship annually over those roads? Can you recall that from memory?

A. I cannot tell you from memory.

Q. I believe you had a statement made out, did you not, for the Stanley Committee? Mr. Landabury, would you object to my showing this to the witness, instead of having one made up especially? I mean, to use this instead of having him make another one?

(After an informal discussion:)

MR. LINDABURY: I am willing that the witness should not read that, but that he should use it to refresh his recollection; and, if he is able to say, seeing those figures, that he recalls them, that would be satisfactory.

MR. DICKINSON: Then I want to put it in the record, instead of calling for an original of it.

THE WITNESS: I think this is correct. It is in the form in which our original statement was prepared, and I think it is correct.

MR. LINDABURY: I shall consent to its going in as you suggested, Judge, subject to correction. Just a moment, please, until I get my copy of it.

MR. DICKINSON: It is on page 1241 of the Stanley Hearings.

By MR. DICKINSON:

Q. You have been shown, Mr. Topping, a statement which appears on page 1241 of the Stanley Hearings, entitled "Republic Iron and Steel Company.—Statement of Ore Tonnages," and so forth. State what that shows, and whether or not it is correct to the best of your information and belief.

A. It is a statement of tonnage we shipped for the year 1910; the actual shipments.

Q. Over the various roads?

A. Over the various roads and from the several districts mentioned here.

Q. And at the rates mentioned in the table?

A. At the rates charged, yes, sir.

MR. COLTON: Please have that marked as an exhibit.

MR. LINDABURY: I consent that this be admitted in evidence, to the same effect as if it were an original, but object to it on the ground that it is irrelevant.

MR. DICKINSON: Subject of course to any correction for misprints.

MR. LINDABURY: Of course it is subject to the right of either party to correct it, if it is found to be erroneous in any respect.

(The table found on page 1241 of the Hearings before the Committee on Investigation of the United States Steel Corporation, entitled "Republic Iron and Steel Company—Statement of Ore Tonnages for Season of 1910, Railroads and Upper Lake Ports, Handling Same and Rate Per Ton Charged," so offered in evidence, was marked "Government's Exhibit No. 86, May 15, 1912.")

By MR. DICKINSON:

Q. Without questioning you as to whether or not the 80-cent rate was higher than it ought to have been, state what was the effect, if any, upon you as a competitor of the United States Steel Corporation to the extent, if any, that the rate was unreasonable.

MR. LINDABURY: I object to that. That is not a matter calling for expert evidence.

By MR. DICKINSON:

Q. Would, or would not, an unreasonable rate charged from carrying your ores from the Missabe region to Duluth reflect itself in the cost of your products, and your ability to compete with the United States Steel Corporation?

MR. LINDABURY: I object to that. The answer to that question is obvious and not at all a matter for expert opinion, and I object to it as being irrelevant.

By MR. DICKINSON:

Q. Answer the question.

A. Any excess charged would naturally be reflected in the cost of operation.

Q. Where would that excess charge go?

A. In the cost of the products.

Q. Where would the money you paid for it go?

A. To the road carrying it.

Q. If that road was owned by the Steel Corporation, it would go into the revenues of that company, would it not?

MR. LINDABURY: I object to that.

By MR. DICKINSON:

Q. Answer the question.

MR. LINDABURY: Do not answer that question just yet. It is not a proper subject for testimony of any kind.

MR. DICKINSON: I think it is.

MR. LINDABURY: It is an argumentative question. It could hardly be designed for the record.

By MR. DICKINSON:

Q. Can you get your ore from your ore mines to Duluth except by hauling it either over the Hill roads or over the roads of the Corporation?

MR. LINDABURY: I object to that, as it has been answered three times, within ten minutes.

By MR. DICKINSON:

Q. Are any of your mines located exclusively upon the railroad lines of the United States Steel Corporation?

A. I am not certain as to that, but I think not.

Q. Do you mean to say that according to your recollection, all of your mines are served both by the Hill roads and by the roads of the Corporation?

A. I cannot answer that specifically, because I do not recollect.

Q. Then you do not undertake to state how that fact is?

A. I would rather answer that by saying that I am not certain as to that fact.

Q. Does the Republic Steel and Iron Company make the

character of products consumed by railroads, other than rails, to any extent?

A. Yes, sir; they make some products consumed by them; most all of our products are consumed by them.

Q. To what extent have the railroads of the country generally been the consumers of the production of steel?

A. That is rather a difficult question to answer.

Q. I will ask you whether or not it is as much as 40 per cent.

MR. LINDABURY: How does this witness know?

MR. DICKINSON: I am asking if he does not know.

MR. LINDABURY: He is not in the statistical department of the Government.

By MR. DICKINSON:

Q. Have you ever seen an estimate made of that?

MR. LINDABURY: I object to that. It is hearsay.

A. I have not.

By MR. DICKINSON:

Q. To refresh your memory, Mr. Topping, I will ask you if you did not state before the Stanley Committee——

MR. LINDABURY: I object to refreshing the witness's recollection by his previous evidence. It is contrary to the rules of practice and the rules of evidence.

By MR. DICKINSON:

Q. I will ask you whether you stated that the railroad-consumption of the country was about 40 per cent of the production of steel.

MR. LINDABURY: I object to that and advise the witness not to answer it. You cannot prove your witness's former testimony in any such way.

A. I do not recollect it.

By MR. DICKINSON:

Q. What percentage of the steel production of the country,

such as is used by railroads, does the Republic Iron & Steel Company make?

A. What percentage of our production?

Q. No, what percentage of the entire production of such steel as is used by railroad companies does your company make?

A. I could not answer that question.

Q. Have you any idea what it is?

MR. LINDABURY: I object to any request made to the witness to speculate or give his ideas merely.

A. I have not.

By MR. DICKINSON:

Q. Have you or have you not been selling structural material to the railroad companies, to any large extent?

A. No, sir; we do not make structural material at all.

Q. I mean the kind of material that the railroad companies use and consume?

A. We have.

Q. In recent years?

A. Yes, sir.

Q. Has there been an increase or decrease in your sales to them?

A. A decrease.

Q. Has that decrease been a constant one or a variable one?

A. The railroads have been buying very lightly for the last three or four years.

Q. Is that decrease on account of the reduction in their purchases?

A. Exactly.

Q. What proportion of your output of pig iron in the Birmingham district goes north of the Ohio River?

MR. LINDABURY: He has testified as to that this morning.

A. Not as to our company.

MR. LINDABURY: You mean the Republic Iron & Steel Company?

MR. DICKINSON: Yes, sir.

MR. LINDABURY: I object to that as irrelevant and depending upon circumstances that cannot be tried out here.

MR. DICKINSON: Have you finished your objection?

MR. LINDABURY: Yes. However, I will object further on the ground that it is an unjustified inquiry into the private affairs of a corporation not a party to this cause.

By MR. DICKINSON:

Q. Answer the question.

A. I have no objection to making a statement. There is nothing secret about it. I should say about 50 per cent of it, roughly. That is, you are speaking of the Republic Iron & Steel Company?

Q. Yes?

A. That is the way I understood the question.

Q. State now, Mr. Topping, whether or not the market of the South for the sale of iron has been constantly growing.

A. It has.

Q. State whether or not during the last ten years there has been going on a general development in the South.

MR. LINDABURY: That is objected to as leading.

A. I have not been operating in the South for ten years.

By MR. DICKINSON:

Q. How long have you been operating there?

A. Since 1906.

Q. Please state whether or not there has been a general development going on since that time.

A. Yes, sir; there has been.

Q. State whether or not the Republic Iron & Steel Company within the last year or two reduced the prices of any of its products?

A. It did.

Q. In what lines of products?

A. Steel bars.

Q. State whether or not before your company made that reduction you notified Judge Gary of your intention before you cut the prices?

MR. LINDABURY: Why do you call it cutting the price? I object to the question.

By MR. DICKINSON:

Q. Before you reduced your price, then?

A. We published broadcast through—

Q. I will ask you—

MR. LINDABURY: Do not interrupt him. Published broadcast what?

THE WITNESS: Through the press.

By MR. DICKINSON:

Q. Have you finished now?

A. I have. I might say we published it broadcast through the Press Association that we had reduced our price.

Q. I will ask you whether or not you notified Judge Gary before you published it broadcast?

A. I did, and all others.

Q. Did you not notify him before you made any reduction or gave any public notification of it?

A. I did.

Q. Before that had you been selling those products on which you reduced the price at the same price at which the United States Steel Corporation had been selling them?

A. We might have been. I am not certain in all cases; in most cases, yes.

MR. DICKINSON: That is all.

CROSS EXAMINATION.

By MR. LINDABURY:

Q. Taking up the later subject first, Mr. Topping, did you notify anybody else at the same time that you notified Judge Gary of your contemplated change of price?

A. I did.

Q. Who else?

A. Most of the manufacturers engaged in the same lines of production.

Q. What do you mean by most; small or large ones—important ones?

A. The more important ones, because the more important

ones were present when I made the statement of my intentions.

Q. How soon did you give that to the press?

MR. DICKINSON: Read that question.

(The question was read by the stenographer).

By MR. LINDABURY:

Q. That is, notice of your intention to change your price.

A. Exactly.

Q. You immediately gave it to the press?

A. In order that I might notify all of the less important manufacturers.

Q. That had not heard you make the statement?

A. Exactly.

Q. And how soon did the reduction take place after you made this announcement?

A. The next day.

Q. This reduction, you said, applied to steel bars?

A. Yes, sir.

Q. And what else principally? I do not mean everything, but the principal ones?

A. The public notice and the notification applied to steel bars exclusively.

Q. I see. How many other makers of steel bars were there in the United States, approximately?

A. Six or seven.

Q. Did they change their prices?

A. That I do not know.

Q. Thereafter?

A. I assume so, although I have no direct knowledge as to what they did.

Q. You understood afterwards that they quoted the same prices as you, did you not?

A. I learned that through trade reports.

Q. Yes.

A. But from no direct information.

Q. Did you manufacture quite a large amount of bars at this time?

A. We did, yes; that was our principal product.

Q. I suppose that a reduction in price by one under such circumstances naturally and necessarily brings down the price the others can get, does it not?

A. It naturally would.

Q. So that a change like that, by way of reducing price necessarily is followed by a similar reduction on the part of others who make a similar product of equal quality?

A. That would be particularly true at a time when the demand was restricted.

Q. Yes.

A. Otherwise it would not be.

Q. I suppose there are times when the demand is greater than the supply, and you can get any old price.

A. Quite right. In that case it would not have had any effect at all.

Q. In that case, I suppose you would not have done it?

A. No, sir; we would not.

Q. So it would not have had any effect?

A. Quite right.

Q. Now, going back to some of the testimony you gave early this morning, you told us that you were connected with the Aetna Company, did you not?

A. I did.

Q. When did you say that your connection with that company began?

A. In 1877, I think it was.

Q. And what was your position with that company?

A. I held a clerical position as a boy.

Q. And how long did you continue with it? Until you got to be a man?

A. Until the time I left it, in 1900, when it was sold.

Q. And then you went where?

A. I continued to operate the property for the National Steel Company, after it was sold.

Q. Yes.

A. Then I became first vice president of the American Sheet Steel Company.

Q. I think you said that the Aetna sold something in competition with the Carnegie Company, did you?

A. I did.

Q. What was that?

A. Sheet bars and billets; steel bars.

Q. I think you said it did not compete with the Illinois Company?

A. No; I did not make that statement in that way, Mr. Lindabury. We were competitors of the Illinois Steel Company.

Q. You did not compete in the Chicago territory?

A. We did compete in steel bars in the Chicago territory.

Q. Perhaps I misunderstood you then.

A. I think so. I referred to the National Steel Company not competing with the Illinois Steel Company in that territory.

Q. Very well. That is what I meant to ask about particularly, anyhow. What was your connection with the National Steel Company after it was formed?

A. I continued to operate the plant independent of the National Steel Company, as President of the Aetna Standard Iron & Steel Company.

Q. I think you said the National Steel Company did not compete with the Illinois Steel Company?

A. I think I did.

Q. But that it did compete to some extent with the Carnegie Company?

A. I did.

Q. And in what product was that?

A. There are quite a number of products in common, rails, plate, structural.

Q. You remember about the formation of the Tin Plate company, I presume?

A. I think so; the general circumstances surrounding it.

Q. And the National was the next of that group?

A. It was.

Q. It was called the Moore Group, was it not?

A. It was.

Q. And I think you said it was organized to furnish the raw material to the Tin Plate Company?

A. It was.

Q. As you understood it?

A. As I understand it.

Q. The Tin Plate Company had no source within itself of obtaining the raw material, had it?

A. It had not.

Q. And this company was organized to supply it, and when it was organized and started out, it acquired a capacity beyond the needs of the Tin Plate Company, did it not?

A. It did.

Q. Then which was the next of the group of Moore Companies to be organized?

A. It was the Sheet Steel and the Steel Hoop.

Q. And the Sheet Steel was organized, was it not, to furnish another customer for the surplus of the National Steel Company, which the Tin Plate Company did not take?

A. They were both organized, as I understood it at the time, for the purpose of balancing up the National Steel Group; for the purpose of making it a self-sustaining proposition.

Q. That is another word to explain the furnishing of a source for using up the surplus of the National Steel Company?

A. In other words, the National Steel Company was the supplying plant for the sister companies, the Sheet Steel and the Steel Hoop.

Q. And when the last two companies were organized it was because the National Steel Company was able to make more raw material than the Tin Plate could use?

A. It was.

Q. And this was the method of working up its production of raw material?

A. As I understand it.

Q. As you understood it. Was the National Steel able to make all that these three sister corporations, as you call them, finishing mills, I will call them, needed?

A. I think so, approximately, to the best of my recollection.

Q. But only just about what they needed?

A. No; I think at times they bought some steel outside.

Q. That is, these finishing mills did?

A. I think so.

Q. Because the National Steel Company was not able to supply them?

A. At times that was true.

Q. There were times, I think you said this morning, when the National Steel Company sold a little steel?

A. At very brief intervals, depending upon the conditions of the finishing mills.

Q. Yes. This sale of raw material, however, other than to its sister companies, was very little, was it not?

A. I should say so, based on my general recollection of the conditions at that time.

Q. And would you say that the National was a competitor of the Loraine at all?

A. Prior to the formation of the Sheet Steel and Steel Hoop, I should say they might have been in that district at times.

Q. But not afterwards, were they?

A. I should not think so.

Q. And its competition, after the Sheet Steel and Steel Hoop were formed with the Carnegie, was trifling, was it not?

A. I did not understand that.

Q. I say the competition of the National with the Carnegie, after the Sheet Steel and Steel Hoop were formed, was trifling, was it not?

A. I should say it was very much lessened on account of the fact that they had less steel to sell in the open market.

Q. So that when the Steel Corporation was formed, the Steel Hoop and Sheet Steel Companies bought sometimes from the Carnegie Company, did they not?

A. I think so.

Q. But that was only when the National was unable to supply them, was it not?

A. That would be the natural conclusion.

Q. Well, generally, that was the course of business?

A. That would be the reason, yes, sir.

MR. DICKINSON: Excuse me a moment. Are you speaking from knowledge now?

THE WITNESS: For this reason, Judge Dickinson—

MR. DICKINSON: I am only asking you if you are speaking from knowledge now.

THE WITNESS: I am, based on my recollection of the condition of my own company. We bought bars, outside, we bought billets outside, depending on the condition of our own producing plant, which might have been down by reason of accident, or blast furnaces out or steel plant off, and at times we were buyers in the open market.

MR. DICKINSON: What company was that?

THE WITNESS: Sheet steel.

By MR. LINDBURY:

Q. So that when the Steel Corporation was formed there was no real or substantial competition between the Moore Group of companies and either the Federal or the Carnegie Company, was there?

A. As far as I recollect——

Q. I will withdraw that, because we have been talking about the National. At the time the United States Steel Corporation was formed there was no substantial competition between the National and either the Federal or the Carnegie, was there?

A. On raw materials, I would say not.

Q. And none at all between the Federal and National, was there?

A. There would be a little there on the finished products.

Q. I see. But it was trifling in amount, was it not?

A. It was rather small in a general sense, small as compared with the output of the National Steel group; that is what I mean.

Q. What percentage would you suppose, or could you put it in tonnages?

A. I could not put it in a definite amount. It involves the steel bar and steel hoop products which were common products of the Illinois Steel, which was then a part of the Federal Steel, as I recollect.

Q. Yes, that is right. Coming down to the Tennessee Coal & Iron, who got up the syndicate which you have spoken about in which Mr. Schley and Mr. Hanna and Mr. Oakleigh Thorne and yourself and others were interested.

A. My impression is, from what has been told me, that Mr. Schley and Mr. Charles Guthrie, who is now dead——

Q. Who invited you into it?

A. I was invited into it after I became associated in the Republic management. I went into the Republic management through Mr. Hanna and Mr. Oglebay's interests.

MR. DICKINSON: I did not hear the last part of that statement.

A. (Continuing.) I went into the Republic ownership and management through Mr. Hanna and Mr. Oglebay, both of whom I had known for many years.

By MR. LINDABURY:

Q. I understood you to say that the object in going into this was to develop the property for the purpose of making money.

A. That is what I said.

Q. And that was either by selling the property or developing it for profit, or in any other way, legitimately realizing on your investment, was it not?

A. We had no intention of selling the property.

Q. Nor any objection to it, I suppose. You had no thought one way or the other about it, had you?

A. My thought was to develop the property and make our money out of the development.

Q. The men who entered that were rather strong men, I take it, from your statement?

A. Their records and reputations would rather suggest that, I think, Mr. Lindabury.

Q. They were, some of them at least, good judges of such properties, were they not?

A. I think so.

Q. Mr. Hanna was as good as anybody in the country, was he not?

A. I judge so.

Q. And Mr. Oglebay was hardly second to him, was he?

A. I think that is right.

Q. No two men in the country, probably, were better judges of such properties than they, were they?

A. They were certainly considered good judges of mineral property.

Q. They were men of wealth, were they not?

A. So reputed.

Q. And very large wealth, were they not?

A. I have no personal knowledge of their wealth.

Q. But that was their reputation?

A. I think so.

Q. And there were other moneyed men in the syndicate, were there not?

A. I cannot say.

Q. Mr. Oakleigh Thorne was in the syndicate?

A. I do not know much about him personally.

Q. Perhaps comparisons or invidious, and so I will stop with saying that there were quite a number in the syndicate who were considered very strong financially, were there not?

A. Yes.

Q. Mr. Oliver Payne was in it, was he not?

A. Yes.

Q. Mr. Oliver Payne is one of the wealthiest men in the country, is he not?

A. He is so reputed.

Q. Did you talk with Mr. Hanna?

A. When?

Q. Before you sold your stock?

A. I did not.

Q. Did you talk with any of the other gentlemen, your associates in the syndicate, except Mr. Schley?

A. I think I would answer your question rather differently from the way you put it. I did not talk with Mr. Hanna individually or directly, but our own syndicate, that is, the executive committee and the finance committee, of which I was a member, discussed the situation, and we decided what we would do individually.

Q. You mean the syndicate that held the stock, do you?

A. No, sir; I mean the executive committee.

Q. Of what?

A. The executive committee which comprised my immediate associates in the management of the company. We talked it over informally after we knew what the development was.

Q. Let me see. There was a syndicate independent of this executive committee, was there not?

A. The syndicate, of course, was the syndicate ownership that controlled the company.

Q. Yes. There was a syndicate which held for the owners the stock, a majority of the stock of the company, was there not?

A. Yes, sir.

Q. That was formed when the scheme was first conceived, was it not?

A. It was, immediately afterwards, I believe.

Q. And who constituted that syndicate?

A. I cannot tell you in detail. The entire membership. There was quite a number of them.

Q. Excuse me, I did not mean that. Who were the managers of that syndicate?

A. Mr. Hanna and Mr. Schley.

Q. This Mr. Hanna that you have spoken of?

A. Yes.

Q. G. B. Schley and Mr. L. C. Hanna?

A. Yes, Mr. L. C. Hanna and Mr. G. B. Schley.

Q. Under the syndicate arrangement this stock which was bought by the corporation could not be sold without the assent of these managers, could it?

A. I hardly think it could, unless moral responsibility were disregarded.

Q. I mean if they observed the terms of the syndicate whether they were legal or moral only, they had at least a veto upon the sale of the stocks?

A. I felt they had, so far as I was concerned.

Q. You did not sell, therefore, or try to induce the Steel Corporation to buy, without ascertaining what the judgment of the syndicate managers was, I take it?

A. No, I did not go that far.

Q. Did you not learn before you sold what the view of Mr. Hanna was in regard to the matter?

A. My understanding was that one member of the syndicate was in a position where it was necessary for him to sell.

Q. That is another question. Did you learn—

A. I cannot answer your question without bringing that in, however.

Q. I am going to get that. But I want to start with ascer-

taining from you if you learned the views of Mr. Hanna before you acted.

A. I did.

Q. He was in favor of selling, was he not? No matter for what reason. I will come to that presently.

A. He was not.

Q. Did you not hear him testify before the Stanley Committee?

A. Yes, I did. I did not hear him testify, but he was not immediately in favor of it. Later we were all in favor of it, for reasons then existing.

Q. What were they?

A. General conditions at the time, that it was the best thing to do under all the circumstances.

MR. DICKINSON: You are bringing out new matter, of course, and I have a right to cross-examine him on that.

MR. LINDABURY: I guess you have, and I suppose you will take it.

MR. DICKINSON: I simply call your attention to the fact.

MR. LINDABURY: I will not be terrified by any threat of that kind.

MR. DICKINSON: I am not a bulldozer.

MR. LINDABURY: No, I know you are not.

By MR. LINDABURY:

Q. What were the reasons, then, that led you and Mr. Hanna and these other gentlemen to favor the sale of the stock?

A. I can answer for my own reasons. They were that I did not care to be a minority holder of the stock.

Q. And you learned that the rest were going to sell?

A. I learned that a number were going to sell, which carried a very substantial ownership.

Q. Who were they that you learned were going to sell?

A. Mr. Schley and his immediate associates, Mr. Schley's holdings.

Q. Colonel Payne?

A. I understood that Colonel Payne was going to sell.

Q. And Mr. Hanna?

A. I knew that Mr. Hanna was going to sell when I had actually sold mine, but not prior thereto.

Q. And Mr. Oglebay?

A. Mr. Hanna, Mr. Oglebay and myself were very close in our associations, and I think we concluded to sell about the same time.

Q. You stood together?

A. To be entirely correct about it, I think we concluded to sell about the same time.

Q. Well, whatever the embarrassments of Mr. Schley may have been, or whatever the condition of the money market may have been, I judge from what you say that these strong financial men were able to hold on to this property, had they chosen to do so. Is that true?

A. They might or might not have been at that time. I do not know as to that.

Q. I am not asking whether they were willing, but whether they were able.

A. That I cannot answer from my direct knowledge.

Q. You did not learn, then, that they were in danger of financial collapse, did you?

A. I had no information as to their individual positions.

Q. There was no discussion on that point among you?

A. Not that I heard.

Q. Nobody suggested that those men did not have the financial ability to carry the Tennessee Coal & Iron Company if they wanted to?

A. I think not.

Q. How did you happen to go to see Mr. Ledyard?

A. At Mr. Schley's suggestion.

Q. Who asked you to do it?

A. He did.

Q. Why did he tell you he wanted you to go? Did he tell you he wanted to sell to Mr. Ledyard?

A. At that time he did not.

Q. What did he tell you?

A. He told me he would like to have me meet Mr. Ledyard and tell him about the Tennessee Property, and I assumed that Mr. Ledyard might become interested. At that time I did not know Mr. Schley's lately reported position.

Q. Did you not know that Mr. Schley's object was to sell to Mr. Ledyard?

A. At that time I did not. Later I did.

Q. You said you went to Mr. Ledyard and you represented the property as you understood it to be, so he could form a conclusion of his own as to its value.

A. I did.

Q. Why did you think he was interested in forming a conclusion as to its value?

A. Because in the formation of the syndicate I did most of the work for Mr. Schley, as I was in a position to do it, from my knowledge of the business, and he had not the knowledge of the business, and he had improperly assumed, as it turned out, possibly, that Mr. Ledyard was going to join our syndicate.

Q. I see; so when you went to Mr. Ledyard and talked to him, you did not know that he was to come into the syndicate?

A. I did not have any direct information as to what his intentions were. I did it at Mr. Schley's suggestion, assuming that was what it was for.

Q. And you did not ask?

A. I did not ask.

Q. Did you see Mr. Ledyard more than once?

A. Yes, sir; I saw him later. I think I saw him twice.

Q. Did you know what Mr. Schley's object was the second time you saw Mr. Ledyard?

A. At that time I did know.

Q. What took place the second time was simply following up the first interview, was it not?

A. I think when I saw Mr. Ledyard the second time it was at Mr. Schley's office down town, and I made no general representations. I think I answered some questions he asked me at the time. Just what they were I do not recall.

Q. This second visit was also in furtherance, I suppose, of Mr. Schley's request?

A. Yes, sir.

Q. You then understood that Mr. Schley was desirous to sell out?

A. I did the second time. I was asked to come to Mr.

Schley's office, and I think when I came in there I found Mr. Ledyard there.

Q. Then you understood the second time that Mr. Schley was desirous of selling out?

A. I was not positive then he was going to sell out, or what his real position was, but I inferred from the character of the conversation that that was what he was contemplating.

Q. Did you understand who it was that Mr. Ledyard was acting for?

A. I did not.

Q. Or who the proposed purchaser was?

A. I did not.

Q. You had not heard the Steel Corporation mentioned?

A. Not at that time; no sir.

Q. All you knew or suspected, then, was that Mr. Schley was looking around for a purchaser?

A. That is the impression I had.

Q. Who that purchaser was you had not then heard?

A. I did later on.

Q. But I say you had not then heard?

A. I had not.

Q. You were a friend of Mr. Schley's?

A. And I am today.

Q. And you are today?

A. I am associated with him.

Q. You are still associated with him?

A. Yes, sir.

Q. You were desirous of furthering his wishes?

A. In every reasonable and proper way I could.

Q. And so, learning that he wished in some way to interest Mr. Ledyard, you went the first time——

A. Yes, sir.

Q. And understanding the second time that he wanted to sell to somebody or other, no matter who, you continued to aid him?

A. I did.

Q. Did you understand, then, Mr. Schley's desire to sell was due to the financial situation and embarrassment of his firm in connection with it?

A. I did not.

Q. Did you not understand it was due to the financial situation?

A. I may have assumed that. I had no direct knowledge.

Q. It was a natural inference, was it not?

A. Yes.

Q. It was an inference that you drew from the situation, was it not?

A. It was a natural inference for me to draw.

Q. And you did draw it?

A. I did.

Q. The situation was pretty bad about that time, in New York, was it not?

A. It was.

Q. And throughout the country?

A. It was.

Q. Do you remember what day it was that you first went to Mr. Ledyard?

A. I do not. . .

Q. Do you remember either the day of the week or the month?

A. I do not.

Q. You said you had a talk or conversation and discussion with some executive committee, at which you decided what to do. What was that committee?

A. We had an informal talk among the various members of our committee.

Q. Do you mean by that the syndicate?

A. No; not the syndicate?

Q. What committee?

A. Of our associates who composed our executive committee, who were also members of the syndicate. It was not a meeting of our board at all. It was a meeting of associates who comprised that board.

Q. An informal meeting?

A. Of the members of the Syndicate.

Q. That is, they were both on the executive committee and members of the syndicate?

A. That meeting was, as I recollect it, just immediately prior to the meeting that we knew of, which was had at Mr.

Morgan's library, which Mr. Schley, and Mr. Hanna and myself attended.

Q. Was Mr. Ledyard there?

A. He was.

Q. That must have been your third meeting with him?

A. Yes, sir.

Q. So you met Mr. Ledyard the third time. Did you talk with him the third time?

A. Not except to speak with him. We had no conversation.

Q. With whom did you talk there?

A. We did not do any talking at all. We sat in the library while the conference was going on in the other room. Then we adjourned without action.

Q. There were several conferences going on in the library that day?

A. Yes, sir; it was a very busy day.

Q. What day of the week was that? Was it Saturday or Sunday?

A. My recollection is that it was Sunday afternoon.

Q. Do you remember how many people there were there?

A. The house was full. We were in one room, with a collection of bibles. That was the first information I had as to the serious character of the situation.

Q. When you saw who was there you realized how serious it was?

A. Yes, sir; everybody felt pretty serious at that time.

Q. A good many of the leading men of New York were there?

A. I think most all of them were at one time or another.

Q. They were all looking pretty serious?

A. Yes, sir.

Q. It was, indeed, a very serious hour?

A. Very.

Q. There seemed to be great danger of a horrible financial collapse?

A. There had been substantially at that time.

Q. Nobody could say where it was going to end?

A. Nobody could see how far it was going to go. The panic was on then.

Q. Did you have a talk with Mr. Schley then about the business end of it?

A. Naturally we discussed matters pro and con.

Q. From whom did you learn that there was then on foot a sale of the Tennessee Coal & Iron Company to the Steel Corporation?

A. The sale had not yet been made.

Q. I say, when did you learn that that was on foot, or under consideration?

A. The first intimation I had was from Mr. Schley himself in which he said to me, in the presence of others, as I recollect it—other members of the syndicate—that it would be necessary to sell the Tennessee property, and I assumed that he meant that it would be necessary for him to sell.

Q. The Tennessee Coal & Iron Company itself was not a corporation in financial difficulties, was it?

A. I do not think so.

Q. You understood that the trouble was with the stockholders, and not with the corporation?

A. That is my understanding, and that is my present belief.

Q. When was it, in that connection, that the members of the syndicate had the informal meeting to which you refer, with reference to that time?

A. My recollection is that it was on either Friday or Saturday at Mr. Schley's uptown office, 745 5th Avenue.

Q. And who was present then?

A. Mr. Oglebay and Mr. Hanna, Mr. Schley and Mr. Gates and myself.

Q. Mr. Gates was on the ocean then, was he not?

A. My recollection is he arrived on Saturday morning—or was it Sunday morning?

Q. I think you are mistaken as to the day.

A. Then the meeting was Monday morning instead of Saturday, either immediately following or immediately preceding.

Q. You are sure he was there?

A. Yes, sir, Mr. Gates was there, and he came immediately from the steamer to the office.

Q. Whenever it was, it was after his arrival?

A. It was after his arrival.

Q. And you then talked the situation over?

A. And that was the first announcement I heard as to Mr. Schley's intention to sell.

Q. Did you know how much Tennessee Coal & Iron Stock Mr. Schley had?

A. I did not.

Q. Did you not hear?

A. At that time?

Q. Yes.

A. No, sir; I did not.

Q. Well, was it a very large proportion of the stock?

A. From the testimony I read it would seem to have been, although I have no knowledge.

MR. DICKINSON: You are asked what you know.

THE WITNESS: I did not know what he had.

By MR. LINDABURY:

Q. Did anybody inquire at that meeting how much Mr. Schley had?

A. Not that I recollect.

Q. There were several men at that meeting that could have taken all that Tennessee Coal & Iron off Mr. Schley's hands and paid for it at the largest quotation, if they had so desired, could they not?

A. That I do not know.

Q. Have you any doubt that either Mr. Hanna or Mr. Ogleby or Mr. Oakleigh Thorne or Mr. Gates, or Mr. Payne could have taken the Schley stock and paid for it at the highest quotation had they chosen to do so?

A. I do not know that I am prepared to answer that, Mr. Lindabury.

Q. Nobody suggested that they do that, I suppose?

A. Not at that time, no sir.

Q. And none of them offered to do that?

A. I think it was too late to have done it.

Q. I do not know about that. Anyhow, that was not proposed or offered?

A. It was not proposed or offered, and I doubt if it could have been done.

Q. And why not?

A. The conditions at the time were hardly suggestive of a banking operation. Collateral was not worth much in those days.

Q. You mean if they had gotten it they could not have borrowed anything on it?

A. I mean that it would have been difficult to have borrowed anything on anything.

Q. And it would have been difficult for even these gentlemen to have raised enough cash to purchase even a comparatively small amount of that stock.

A. It might have been.

Q. It might have been. That is what I mean.

A. Yes.

Q. In fact, it was very difficult to get any money for anything, was it not, no matter what the security was?

A. Unquestionably so.

Q. What did you resolve to do at that meeting? You said you made up your mind then what you would do?

A. We resolved we would sell at a certain price.

Q. Individually?

A. That we would sell, the minority stockholders to be taken care of.

Q. That all of you would sell?

A. Yes.

Q. That you would sell individually, but that you would all sell?

A. Only with the understanding, however, that the minority stockholders were taken care of at the same price we were paid.

Q. By that you mean that they were given an opportunity to sell?

A. Exactly so.

Q. At the same price at which you were selling?

A. Quite right.

Q. And everyone of you agreed to that?

A. That was the conclusion.

Q. Did you understand then who were the proposed purchasers?

A. I did.

Q. And who were they?

A. The Steel Corporation.

Q. And who told you that?

A. I got that from Mr. Schley.

Q. Did you understand that there was any pressure brought to bear upon you by the Steel Corporation to make this sale?

A. I did not so understand.

Q. Did you understand from Mr. Schley or from any of your associates, that there was any pressure brought to bear by Mr. Morgan or Mr. Ledyard or the Steel Corporation to bring about the sale?

A. I did not.

Q. Or by Judge Gary?

A. I did not.

Q. Or Mr. Frick?

MR. LINDABURY: Was there an answer as to Mr. Frick?

THE STENOGRAPHER: No, sir.

By MR. LINDABURY:

Q. I meant to include in my question the name of Mr. Frick, and to ask whether he had done anything, so far as you heard?

A. I did not meet Mr. Frick in the negotiations at all.

Q. To bring any pressure upon you or anybody else to make this sale?

A. I did not know Mr. Frick in the transaction.

Q. Did you understand yourself or hear or learn from any of your associates, that either the Steel Corporation or Judge Gary or Mr. Frick or Mr. Morgan or Mr. Ledyard or anybody connected with them had done anything to bring about the situation which required the sale of the stock?

A. I did not, and I don't think so to-day.

MR. DICKINSON: You were not asked what you thought, and you will please not state what you thought. It was not responsive to the question, and an improper answer.

MR. LINDABURY: Read the question.

(Question and answer read by the stenographer.)

MR. SEVERANCE: It is perfectly responsive.

MR. DICKINSON: I object to that part of the answer as not responsive and as volunteered by the witness.

By MR. LINDABURY:

Q. Upon the assumption that you have answered beyond the question I will make the question as broad as the answer. Have you learned of anything of that kind since?

A. I have not.

Q. Did you think so then, or do you think so now?

MR. DICKINSON: Wait a moment?

A. I do not.

MR. DICKINSON: Wait a moment. That is excepted to as improper examination, calling for what the witness thought, and not for what he knew.

MR. LINDABURY: Judge, do you remember how many times you asked him this morning about what he thought about all kinds of things?

MR. DICKINSON: Well, I remember you excepted, too.

MR. LINDABURY: That is all right. Now I can understand why you excepted.

MR. DICKINSON: I thought I would give you a Roland for your Oliver. I do not admit I asked any questions just of that character. My questions were as to judgment and opinion, and not what he thought.

MR. LINDABURY: Your questions were what?

MR. DICKINSON: My questions asked for his judgment and opinion about properties and the market.

MR. LINDABURY: Do you want me to ask him what his judgment is instead of what he thought?

MR. DICKINSON: No, I do not want you to ask that at all. I am only saying I do not think the conditions are quite parallel.

By MR. LINDABURY:

Q. As to the financial situation of the company, you had found the works of the company in pretty bad shape when you took hold, had you not?

A. I reported that I did.

Q. I believe that is so. However, I am asking you not for your report, but for the fact.

A. I did, yes.

Q. And you had found that quite a good deal of money would be necessary to put the company on its feet to earn anything, had you not?

A. I had.

Q. And up to the time of the sale how much had the stockholders put in?

A. About eight million, I think.

Q. And that had been expended, I think you have told us?

A. Very largely.

Q. To a very large extent?

A. Possibly up to the time of the transfer—I would not be certain about this, but I think something over seven million had actually been expended. There was an unexpended balance of something like a million.

Q. And they had built some works which were not yet completed, I think?

A. True.

Q. What were they?

A. Open hearth steel works.

Q. And had they completed anything of their improvements?

A. Yes; they had completed three blast furnaces.

Q. So that they were getting some returns from them?

A. Yes.

Q. But not any yet, I take it, from the other mill, the open hearth?

A. They had one open hearth furnace in operation at the time, and the rail mill was in operation, but not on the complete reconstructed basis.

Q. Do you know what the floating indebtedness of the company was at the time the Steel Corporation took it over?

A. I think at the time we had—I do not remember exactly. It is quite a while ago.

Q. I have a memorandum here showing \$4,168,103. Do you know whether that is about right?

A. I would say that that is rather more than my recollection would suggest. You must have taken into account in that statement the unexpended balances on contracts.

Q. Suppose I give you a few of the details. It might help you.

A. All right.

Q. Amount then past due \$300,000, maturing at early date, \$1,334,312, total, \$1,634,312, accounts payable, \$2,533,791, totaling the amount I first mentioned. Is that about right?

A. It might have been but I am surprised that the amount is as large as you have stated.

Q. It is taken from the books of the Steel Corporation.

A. It may be right. Of course it would show at that time the uncollected payments on stock subscriptions, three and a half million; does it not?

Q. The Memorandum I have now shows nothing——

MR. DICKINSON: Are you using that to refresh his memory, or offering it in evidence, or what?

MR. LINDABURY: I am cross examining the witness on his testimony.

MR. DICKINSON: But the witness has never seen that.

MR. LINDABURY: It does not make any difference whether he has or not.

MR. DICKINSON: You are stating what that shows. You are stating that you have a memorandum there from the corporation, and what that shows.

MR. LINDABURY: Yes.

MR. DICKINSON: I object to that in examining this witness. If he knows anything about the memorandum and can identify it to refresh his memory, that is perfectly competent.

MR. LINDABURY: To the extent of my sinning, Judge, or account of which I will repent in sack cloth and ashes or any thing else, is in telling him it is from the corporation's books.

MR. DICKINSON: I do not want repentance; I want desistance.

MR. LINDABURY: You want reformation?

MR. DICKINSON: Yes.

MR. LINDABURY: I will repent.

MR. DICKINSON: Repentance goes before reformation.

By MR. LINDABURY:

Q. The company raised this money which it put in from its existing stockholders, did it not?

A. It did.

Q. By issuing new stock, of which they took pro rata amounts?

A. Yes.

Q. It was in the nature of an assessment upon the old stock, was it not, for which they got new stock?

A. It was an increase of capital with the privilege to stockholders to subscribe for that new capital.

Q. Which they generally did?

A. Which they always did.

Q. There were not many stockholders, were there?

A. Oh, quite a number.

Q. Were there small ones outside of the syndicate?

A. There were.

Q. Did they take too?

A. They did.

Q. This ten million was raised—I mean seven millions.

A. There were about eight millions of stock increase, I think you will find.

Q. That was done in three allotments, was it not?

A. Some testified that it was three; my recollection is it was two.

Q. I do not remember whether it was you or someone else who said three.

A. I said two, and that is my present recollection.

Q. My understanding—and let me say of your testimony—is that there were three.

MR. DICKINSON: What testimony are you speaking of?

MR. LINDABURY: The Stanley Committee testimony.

MR. DICKINSON: Do you think it is competent for you to state what your understanding was from that testimony?

MR. LINDABURY: Don't you?

MR. DICKINSON: No; I do not.

MR. LINDABURY: Then I will not do it any more.

MR. DICKINSON: Thank you. I am objecting to your stating your understanding of the testimony of other witnesses

By MR. LINDABURY:

Q. Whether there were two or three allotments of stock the last one had not been fully paid up, had it?

A. No, sir; it had not. One payment on it had been made.

Q. And do you remember how many payments were to be made, under the terms of the subscription?

A. I think there were four, and one had been paid.

Q. So that a quarter of the last subscription only had been paid?

A. I think so.

Q. And do you remember whether those payments were evenly divided so that 25 per cent. had been paid?

A. I think they were substantially in equal amounts. There may have been some twenty and some thirty and some twenty-five; but my recollection is they were about equal installments.

Q. And about how much remained unpaid?

A. About three and a half millions, according to my recollection.

Q. Then these stockholders who sold out were liable for subscriptions amounting to three and a half millions that were unpaid at the time of the sale, were they not?

A. Whatever the amount was, which I think was about three and a half millions.

Q. And when did the next payment come due?

A. I am not certain as to that. It might have been in February. That would be my recollection.

Q. And do you remember about when the others came due?

A. I do not.

Q. Or how soon the total payments were to be made?

A. I have not seen any of those papers since they were turned over to the corporation at the time of the sale.

Q. I will ask you whether or not, in addition to the floating indebtedness of \$4,168,103 at the time of this sale, the

Tennessee Coal & Land Company was committed on construction contracts and improvement work then underway to the further amount of \$1,830,000?

A. I have no such recollection.

Q. You do know that they were committed on construction contracts not yet completed, do you not?

A. I do.

Q. You do not remember the amount?

A. My recollection is that the uncompleted contracts as shown on our appropriation statement at the time they turned the property over were about equal to the unpaid balance on stock subscriptions.

Q. The amount that I mentioned is much less?

A. That would be about three and a half million unexpended balance.

Q. The amount I mentioned in my question is \$1,830,000. Judge Dickinson will not let me tell you where I got that.

A. My recollection is taken from the figures that were presented at that time, which covered not only its financial condition, but the balance due on stock subscriptions unpaid, and the commitments and construction program that were uncompleted and not matured.

Q. I will ask you whether the total floating debt and the contractual obligations taken together did not amount to \$5,998,103, practically \$6,000,000? What do you say to that?

A. Those figures I could not verify from recollection.

Q. Do you think they are approximately correct?

A. I have no recollection on the subject.

Q. Did I understand you that the company—

MR. DICKINSON: I object to that question. How does he know what you understood? Ask him what he said, not what you understood.

By MR. LINDABURY:

Q. Did I correctly understand you this morning as saying that this company at the time of the transfer had an adequate water plant, water works?

A. I did not say that.

Q. I thought you did, and I wondered if I misunderstood you.

A. I made no reference to a water plant.

Q. In fact, they did not have a satisfactory water supply?

A. Not a good water supply, no.

Q. The Steel Corporation, after it took over this stock constructed one, at a very large expense, did it not?

A. I believe so.

Q. You have a knowledge, I suppose, of what has gone on since then?

A. I have in a general way, yes.

Q. Costing more than a million dollars?

A. I have no doubt it did.

Q. And they have taken this railroad that you spoke of, the Birmingham Southern Railroad, and they have put in over a million dollars in that in extensions and betterments, have they not?

A. As to that, I do not know; but they may have readily spent a million dollars in its extensions and betterments.

Q. It was in such a condition as to make that a proper expense, was it not?

A. I should say yes.

Q. And they enlarged and extended the rail mill, did they not?

A. I do not know that they did. I think our construction programme was carried out to the letter; no changes made in it.

Q. Perhaps it was started and not completed when they took hold.

A. That is about the size of it.

Q. But did they not spend \$650,000—

A. That was part of our unexpended balance, three and a half million dollars.

Q. Of course, they did not secure those subscriptions?

A. We secured a waiver.

Q. The stock was sold ex the subscription?

A. Yes, sir.

Q. So they were cancelled?

A. Yes.

Q. And consequently whatever in addition they put in they had to supply from other sources?

A. Yes.

Q. Now, the coke plant. They built a new coke plant, did they not?

A. They did, I believe.

Q. At a cost of over half a million dollars?

A. Probably more than that.

Q. That is right. That was a proper thing, a necessary thing to do in the proper development of the property, was it not?

A. I should consider it was very proper.

Q. Your properties, that is, the Republic properties down there, from your former connection with the Tennessee Coal & Iron makes you very familiar with the proposition, I understand?

A. I consider I am reasonably familiar with it, yes.

Q. So I am told. They built an electric power plant, after they got it, did they not?

A. They may have extended the one we put there.

Q. And they enlarged the station and added to it, making an expenditure altogether of \$526,000?

A. That is quite probable.

MR. DICKINSON: I do not exactly understand the inquiry. Are you inquiring whether they expended these moneys down there?

MR. LINDABURY: I am asking him whether he knows that these amounts were expended.

THE WITNESS: I do not say that I know that these exact amounts were expended, but I am not surprised at the amounts mentioned.

By MR. DICKINSON:

Q. But you are not testifying as to the amounts?

A. I am not testifying as to the exact figures.

MR. LINDABURY: He is testifying that what they have done would approximately cost that, and that it was necessary.

A. I have testified to that, and I do think so.

By MR. LINDABURY:

Q. Taking the expenditures made and the development or

completion of the development of the property, I will ask you—no, you may scratch that out, and I will put the question in different form, because Mr. Dickinson would object to that.

MR. DICKINSON: I am perfectly willing to have you put in the figures taken from your books, subject to examination and exception. I am willing to have you put in any statement showing what your expenditures were.

MR. LINDABURY: Very well. I have it all in now, pretty well.

MR. DICKINSON: I would have agreed to that at any time.

MR. LINDABURY: I knew you and I would agree if we ever got a chance.

I want to ask this witness a few questions about this thing anyway.

MR. DICKINSON: I did not mean to interrupt any examination you had in mind or any plan of examination you had in mind.

MR. LINDABURY: I understand.

By MR. LINDABURY:

Q. Did not the expenditures of the Steel Corporation down there in the development of this property amount to \$15,541,000 or thereabouts? Did they make expenditures of about that value, as nearly as you could estimate?

A. I would answer that question this way: that from what I have seen myself as to the extensions made since I have left the property, I think what has been expended has been wisely and necessarily expended. As to the amount, I do not know.

Q. Well, approximately, what would you think?

A. I have not gone over it carefully enough to make even an approximation.

Q. It would amount to a good many millions?

A. A good many millions, yes.

Q. You got a large order from the Harriman lines for rails some time before the sale?

A. We did.

Q. About six months before?

A. That is what I stated, according to my recollection; something like that.

Q. How large were the preceding orders you had had from them?

A. They were small orders.

Q. About how large?

A. Oh, from ten to fifty thousand tons.

Q. Just for experimentation, I suppose?

A. Yes. For trying out the southern rail.

Q. Do you know what was done with them?

A. Which rail?

Q. Those prior rails that you furnished, the experimental rails.

A. They were consumed and paid for.

Q. I suppose they were made like experimental rails are generally made?

A. At a very high cost.

Q. At a cost, way beyond the selling price, were they not?

A. We made no money on the rails——

Q. Hold on. You will have Mr. Dickinson objecting to my question if you do not answer it. They were made at an expense much above the selling price, were they not?

A. Those experimental ones?

Q. Those experimental rails.

A. I think probably a part of them were and a part of them were not.

Q. Do you think any of them were made at a cost not exceeding the selling price?

A. Yes.

Q. Take the large order. Do you know what it cost to fill that?

A. Probably as much as we got for them.

Q. You stated, did you not, that \$29 a ton was the price?

A. Yes, sir.

Q. Do you not know that it cost \$30 a ton to make them?

A. It ought not to have cost that much.

Q. It ought not to cost over \$29?

A. It ought not to cost that much. Most of them ought to be made under the new equipment.

Q. You do not know what it cost to make them?

A. I was not there when the rail was made, and I do not know.

Q. I think you said it ought to have cost as much as you got for them.

A. On the old equipment.

Q. I do not know whether it was the old or not, but you made some such remark as that, that you anticipated that they would cost as much as you got for them.

A. We expected that when we sold them.

Q. But you did not expect that you would actually lose money?

A. We did not expect to continue in operation that kind of equipment, which we knew was obsolete; the equipment on which the rails were made during the period of construction.

Q. You had great expectations at the time you were holding the property, did you not?

A. In what respect?

Q. In respect to the future of the property. Your expectations were always good, were they not?

A. Always.

Q. And high?

A. Yes.

Q. And that had been the history of this company for more than twenty years, had it not?

A. I do not know as to what the expectation of the owners of the company had been for twenty years.

Q. The company had been in existence and had been exploited by various owners for upwards of twenty years, had it not?

A. And more.

Q. And more?

A. Yes. It was born the same year I was born. That was in 1860.

Q. It had not been nearly as successful, though? The company had never made a success in the hands of any of its various owners, had it?

A. I do not think so.

Q. It had been a foot-ball in the money markets of the country, had it not, more or less, for all these twenty or thirty years?

A. It was so reported. I had no knowledge of it.

Q. You said something about your coal properties, and the sale of your coal; and you did pretty well, I take it from what you said, in the disposition of your coal?

A. We made money on coal sales, always.

Q. Did you sell a considerable amount of coal?

A. I think so.

Q. And in the southern market?

A. Altogether.

Q. What competition did you have in that market?

A. We had Pennsylvania competition by river, and we had southern competition, Tennessee, Kentucky, and all around.

Q. Down the river?

A. Yes.

Q. The competition all came down the river? I mean, it came from up the river?

A. It came from Alabama and Tennessee mines, shipping by rail as well as by water.

Q. And you thought of this slack water canal project chiefly in connection with the marketing of your coal, I take it from what you said this morning?

A. That was one thought that we had in connection with it.

Q. That was the principal one, I thought you said?

A. I did, so far as immediate results were concerned.

Q. But——

A. (Interrupting.) Ultimately——

Q. When it came to the limitless future——

MR. DICKINSON: Let him finish. Let him answer.

THE WITNESS: Ultimately it would be a means of reaching the export market, also.

By MR. LINDABURY:

Q. It would be the means of reaching the export market for anything that you had to export?

A. Yes. Our intention was to extend the railroad to the river. That is the way we would make the cheap transportation.

Q. Do you mean the railroad from the mines? What railroad?

A. The Birmingham Southern.

Q. From the mines to the Alabama River, you mean?

A. To the Warrior River.

Q. What became of that project for slack water navigation?

A. It is substantially complete. I believe it is complete all but the upper two locks.

Q. Are they using it now?

A. It is not complete. They will use it, unquestionably.

Q. It cannot be used until it is complete?

A. They will use it, undoubtedly.

Q. What does that involve—a lot of digging?

A. It involves building dams.

Q. With gates?

A. With gates, yes, sir.

Q. With locks, I mean?

A. So as to have slack water navigation. It is the same class of improvement as those on the Ohio River.

Q. You have not got it yet?

A. No. It is coming, however, and it will be a great thing for the South when it is completed, too.

Q. With respect to your iron products, you had no northern market, I take it from your testimony, for any iron products except pig iron at this time?

A. We did not ship anything except pig iron.

Q. What else could you make beside rails?

A. Plates and bars.

Q. They were only disposed of in the Southern market?

A. Entirely so.

Q. You did not sell any pig iron into the Northern market except what you could not dispose of in the Southern market, I take it?

A. We sold the larger part of our pig iron north.

Q. That was because there was no market south for it?

A. Yes. At that time I think we sold about 40 per cent south and 60 per cent north.

Q. How much competition did you have in the Birmingham District?

A. We had ample competition.

Q. Who were your competitors?

A. Sloss-Sheffield and the Republic Iron & Steel, the Southern Steel, the Birmingham Coal & Iron,—several companies.

Q. The Woodward?

A. And the Woodward Iron Company.

Q. And all of those still exist, do they not?

A. All of them are in operation today except the Southern Steel, I believe.

Q. And they are good, strong companies, are they?

A. Some of them are.

Q. The Republic Iron & Steel Company, for instance?

A. We think so.

Q. The Republic is a flourishing affair, is it not?

A. Reasonably so.

Q. What about the Sloss-Sheffield?

A. I do not know as to its affairs.

Q. And the Woodward?

A. That is a private corporation.

Q. They are all private corporations, are they not, including the Republic?

A. I should not call the Republic a private corporation. Its affairs are as well known as the affairs of the Steel Corporation. We indulge in just as much publicity as you do.

Q. You mean the affairs of the Woodward Company are not published? That is the sense in which you use the word "private"?

A. Exactly.

Q. It is a family affair?

A. It is a family affair. It is owned by the Woodward family.

Q. That is what you meant when you used the expression, "private corporation"?

A. I meant that it was a private corporation in the sense that they did not indulge in public reports.

Q. In a legal sense, of course, all of them are private corporations.

A. Yes. I meant in the general acceptance of the term; in the ordinary use of the word "private."

Q. Where do they market their pig iron?

A. About as we do,—north and south.

Q. There is not an unlimited demand for pig iron in the South, is there?

A. No, sir; there is not an unlimited demand anywhere.

Q. There is not as large a demand for pig iron in the South as the capacity of the Birmingham mills could fill, is there?

A. No; we would not be selling north if there were.

Q. Why not?

A. Because of the lack of development. There is not the same density of population; not the same number of mouths to feed.

Q. Why would you not be selling north; that is what I mean.

A. Because there is not the demand south to absorb the output.

Q. Why would you not sell north if there was an adequate demand south?

A. We would not.

Q. Why not?

A. On account of the cost of carriage and all that.

Q. That is what I am coming to. What is it?

A. As a general proposition, about \$4.25 a ton to the lake country.

Q. What does it cost you to make a ton of pig iron?

A. That varies somewhat with the class of product.

Q. Give us some sort of an average.

A. As a general proposition, \$9 a ton, probably, would be within the approximate cost of the average furnace. Some do better and some not as well.

Q. \$4 added to that is a very considerable item, is it not?

A. It is.

Q. Where do your pig iron shipments ordinarily cross the Ohio River when you ship north?

A. It depends on the direction north they are going.

Q. What is the principal northern market?

A. We ship to Chicago and we ship to Kansas City. We ship throughout the United States. We ship to Boston and Maine.

Q. Is Cincinnati a good market?

A. Yes.

Q. That is about the nearest northern market, is it not?

A. Cincinnati and St. Louis are two good markets.

Q. They are your nearest northern markets?

A. Yes, sir. Then there is less local competition at those two points.

Q. Those are ideal points?

A. They are the best markets that the south has in the north.

Q. Can you put a ton of pig iron down at Cincinnati as cheaply as Pittsburg can, for instance?

A. What we can do is not what some others can do.

Q. I mean——

MR. DICKINSON: Let him answer.

THE WITNESS: I cannot answer his question the way it is put and give an answer that would satisfy me.

MR. LINDABURY: Strike that question out, and I will ask it in another way.

By MR. LINDABURY:

Q. Could you, the Tennessee Coal & Iron Company, in 1907, put a ton of pig iron down in Cincinnati as cheaply as the Pittsburg furnaces could, or the Chicago furnaces?

A. Yes, I think so, competing with the class of products we ship, foundry iron.

Q. I am speaking of pig iron.

A. Bear in mind that the Tennessee Company ships north nothing but foundry iron and some basic, that is steel-making iron; and most of that steel-making iron at the time I was there, was sold in St. Louis and along the Ohio River to the smaller steel plants and steel casting plants.

Q. You think you could save enough on the cost of production to overcome the freight rate from Birmingham to Cincinnati?

A. I do, and we are doing it to-day.

Q. What would you say as to Chicago?

A. We are shipping iron into Chicago to-day.

Q. Could you put a ton of basic pig down in Chicago as cheaply as the Chicago furnaces?

A. No.

Q. I think you said that this morning, did you not?

A. I did. That is why I say you must be careful as to the kind of pig iron you are talking about.

Q. I think you said this morning that they could make a ton of basic pig iron in Chicago as cheaply as it could be made in Birmingham?

A. I said some producers could.

Q. It could be made as cheaply, you said, in Chicago, as it can be made in Birmingham. You said that, did you not?

A. I did not put it quite that way.

Q. Let us have your way of putting it, then.

A. I said it was being made, I thought, approximately as cheaply as it is being made at the present time.

Q. In Birmingham?

A. Yes.

Q. By whom, in Birmingham?

A. By the average producer, as at present equipped, competing with a better equipped plant in the north.

Q. Then with four dollars a ton freight, of course, the mills at Birmingham could not compete with the Chicago mills in the Chicago market, could they, on pig iron?

A. Not the southern high-cost mills.

Q. Not the what?

A. The high-cost producers south could not successfully compete with the low-cost producers north, under those conditions.

Q. You spoke of the average cost of production in the south. You mean there are some who make it enough cheaper than that price down there to enable them to compete?

A. Very much.

Q. That is, there are some who make it four dollars a ton cheaper, you say, than the average?

A. To put that so that it is entirely clear to you, not as an answer to your general inquiry, I would state that we can make pig iron I think several dollars a ton cheaper than a good many producers in the south.

Q. This is getting interesting.

A. Consequently when you talk in general terms you necessarily qualify my remarks.

Q. I understand that. Let me get at it this way: You say that basic pig is made in Chicago more cheaply by the mills of the Steel Corporation than the average cost of producing it to-day in Birmingham?

A. I think that is probably true.

Q. Do you mean to say that you, or anybody else there, are able to make it for four dollars a ton cheaper than the average cost?

A. I think so.

Q. I should think you would get all the business pretty soon.

A. We have had all we wanted. We are running 100 per cent. where the balance are shut down.

Q. By "we" I understand you to mean the Republic?

A. Yes, sir.

Q. Is the Republic Iron & Steel Company making it cheaper than anybody else down there?

A. No; making it cheaper than many.

Q. There must be somebody then who ought to go out of business and are in a fair way to do so.

A. Some are out of business.

Q. You are not speaking of them, are you?

A. I am.

Q. You mean you are making it four dollars a ton cheaper than those who are out of business?

A. There are a good many idle furnaces down south.

Q. Yours are not idle?

A. We have been running 100 per cent for the last eighteen months.

Q. Are you running full time now?

A. We have never been running any other way.

Q. Is the Republic Steel & Iron Company making any more iron in the south now than they were five years ago?

A. We are.

Q. You are improving all the time?

A. We are.

Q. What about the Woodward Company; are they improving?

A. They are.

Q. What about the Sloss-Sheffield Company; are they improving?

A. I would rather not talk about my neighbors.

Q. Generally the business is in a prosperous condition down there, is it?

A. I would say not.

Q. Generally not?

A. Generally not.

Q. How does it compare now with what it was when the Steel Corporation went down there? I am interested to know whether the Steel Corporation has acted as a blight on that community.

A. I do not see that the change of ownership of the Tennessee Coal and Iron Company has had anything to do with the commercial conditions down there, one way or the other.

Q. So you think that they, coming there as strangers, have done just as well by the south as you were doing?

A. I think they have tried to.

Q. Nobody could do better than that, could they?

A. I do not think so.

Q. From 1900 to 1910 the consumption of pig iron in the north has doubled, and in the same period the consumption in the south has remained stationary, 2,500,000 tons per annum? Is not that so?

A. Yes, sir.

MR. DICKINSON: Is the witness asked whether that is true or not?

MR. LINDABURY: Yes.

MR. DICKINSON: Just read that question.

(The stenographer read the question as follows:)

“Q. From 1900 to 1910 the consumption of pig iron in the north has doubled, and in the same period the consumption in the south has remained stationary, 2,500,000 tons per annum? Is not that so?”

A. Do you mean production?

By MR. LINDABURY:

Q. Yes.

A. Then my answer stands as I made it, "yes, sir."

Q. I find that I was right when I said "consumption," and that is what I mean.

A. I do not know anything as to statistics on the matter of consumption .

Q. You would answer that way as to the matter of production, then?

A. I would put it on the basis of production, and I should say your figures were about right.

Q. Yes.

A. We have no data or statistics of consumption.

By MR. DICKINSON :

Q. Is your answer that the production had been stationery in the South?

A. I think it has been substantially so.

Q. During what period?

A. The increase has been very light. During the last decade there has been a very slight growth.

Q. In the production of iron?

A. Yes, sir. There is a reason for it.

By MR. LINDABURY :

Q. And do they not now send north as large a percentage of their production as they did ten years ago?

A. No; they do not.

Q. They consume a larger part of it down there?

A. Yes, sir.

MR. LINDABURY: I think you had better go. Judge, do you consent?

MR. DICKINSON: Certainly.

MR. LINDABURY: He wants to catch a train.

MR. DICKINSON: Please return in the morning, Mr. Topping, at 10:15.

(Thereupon, at 3:54 o'clock p. m., the hearing was adjourned until to-morrow morning, May 16, 1912, at 10:15 o'clock a. m.)

NINTH DAY.

ROOM 210, CUSTOM HOUSE,
NEW YORK CITY,

THURSDAY, MAY 16, 1912.

The hearing was resumed at 10:15 o'clock a. m., before
SPECIAL EXAMINER, JOHN ARTHUR BROWN.

Appearances the same as heretofore noted.

JOHN A. TOPPING,

the witness under examination at the time of adjournment,
resumed the stand for further cross examination.

By MR. LINDABURY:

Q. Do you know what per cent the output of the Tennessee Company was of the steel product of the country at the time of this sale?

A. What per cent the Tennessee Company produced of the steel?

Q. Of the total steel products of the country. About one per cent, was it not, or 1.7 per cent?

A. That or less, I should say.

Q. You spoke of pig iron being the one product of the Tennessee Coal & Iron Company which you marketed in the northern markets or north of the Ohio.

MR. DICKINSON: I beg your pardon. I understood him to say foundry iron and basic steel.

THE WITNESS: No, sir, I did not. Basic pig iron. Some basic pig iron and foundry iron exclusively.

MR. DICKINSON: The two products?

THE WITNESS: The only products sold north of the Ohio River were pig iron products.

By MR. LINDABURY:

Q. That is the way I understood you.

A. That is what I stated.

Q. Did the Steel Corporation sell pig iron?

A. They did not.

Q. So they did not compete with you in the sale of pig iron?

A. No, sir; they did not.

Q. They did not compete anywhere?

A. They did not.

Q. North or south?

A. They did not.

Q. Speaking of the cost of producing pig iron, the differential in cost which you spoke of would not apply, would it, clear up to the production of the finished product?

A. I think not.

Q. While pig iron could be manufactured more cheaply at Birmingham than some of the northern furnaces, the difference that you speak of in cost of production would not apply to finished products?

A. It would not, on account of labor inefficiency.

Q. Take the matter of rails. Do you know whether they could be manufactured cheaper at Birmingham than, for instance, at Pittsburg? I will ask you whether they were, not whether they could be.

A. They were not, as a matter of fact.

Q. How about Chicago?

A. They were not manufactured—I think, at any point where they were manufactured they were made at less cost than we made them, at the time I had charge of the property.

Q. The ores in the Birmingham district are not of the same grade as in the northern district, the Lake Superior district, for instance, are they?

A. Not in the sense that they contain as high a percentage of metallic content.

Q. That is, they are rated according to the metallic content?

A. Yes. Other elements enter into the question besides metallic contents.

Q. Speaking generally, they are not of as high a grade as northern ores, are they?

A. No, sir, they are not.

Q. And the successful production of iron from those lower

grade ores must require a larger scale of production, I judge, than in the case of the higher grades. Is that the fact?

A. No, not in that sense.

Q. And in manufacturing from those low grade ores, is it not necessary to combine the open hearth and Bessemer processes to some extent?

A. No, sir.

Q. Or the Bessemer——

A. (Interposing.) And basic?

Q. Yes.

A. And Bessemer?

Q. Yes.

A. No, sir.

Q. No combination of the ores?

A. It is not essential, no, sir.

Q. Is it practiced?

A. It is.

Q. Because it is thought to be economical, I suppose?

A. We thought it suited our purposes best to combine the basic and Bessemer operations, the duplex process, so-called.

Q. It is supposed to produce a higher grade of product, is it not, when you combine them?

A. No, sir.

Q. It is done for economical purposes only, is it?

A. It is done for quantity. You get more speed in your operation.

Q. Therefore a larger production in a given time?

A. Yes, sir, in a given open hearth furnace.

Q. To go back a moment to the Sheet Steel Company's production, do you know what that is now as compared with the total production, what the present percentage of the production of the Sheet Steel Company is?

A. Approximately I do.

Q. What is it?

A. I think something like 50 per cent.

Q. Is it not 47 per cent. at this time?

A. It may be. I said approximately.

MR. DICKINSON: You say it is approximately what?

THE WITNESS: Approximately 50 per cent.

By MR. LINDABURY:

Q. Do not the independents, that is, the manufacturers of the same products outside the Steel Corporation, manufacture 53 per cent? Of course, they manufacture whatever the difference is.

MR. DICKINSON: He has already said that he thinks it is approximately 50 per cent.

MR. LINDABURY: I am asking him if it is not 53 per cent that the independents manufacture.

MR. DICKINSON: I think he said he did not know, and he has answered the question.

MR. LINDABURY: Of course if he says that one company manufactured approximately 50 per cent, then, of course, the other would manufacture approximately 50 per cent.

THE WITNESS: Three per cent is not a very material difference.

By MR. LINDABURY:

Q. No, and you have not the figures exactly, I take it?

A. My recollection is that it is approximately 50 per cent; it may be 47 per cent.

Q. The products of the independents has been gradually increasing since the Steel Corporation was formed, has it not?

A. Very rapidly.

Q. Both in proportion and quantity?

A. Both.

Q. The independents have very largely increased the quantity of production, have they not?

A. They have.

Q. And the Sheet Steel Company also?

A. I think so.

Q. But the independents have increased more rapidly?

A. Naturally, in view of the previous statement made at the time of the organization in respect to the percentage they then controlled.

Q. What I mean is that the increase relative to the amount that the independents have produced has not been due to the falling off of the product of the Sheet Steel Company, but to the great increase in the product of the independents.

A. The great increase in the demand of the country and the natural growth to meet that demand by independent companies.

Q. The actual tonnage of the Sheet Steel Company, if I understand it, has increased, but its percentage of the whole has decreased?

A. That is true.

MR. DICKINSON: Of what time are you speaking?

MR. LINDABURY: From the time of the organization of the Steel Corporation down to the present time?

MR. DICKINSON: You are speaking of the production, now, of the Sheet Steel Company?

MR. LINDABURY: Yes; the Sheet Steel Company.

THE WITNESS: The Sheet Steel Department of the American Sheet & Tin Plate Company, he means, of course.

MR. LINDABURY: I asked about the Sheet Steel Company.

THE WITNESS: That is not in operation. It is the Sheet Steel Department of the American Sheet & Tin Plate Company.

MR. LINDABURY: The name having been changed.

THE WITNESS: It was consolidated at the time I was president of the two companies.

MR. DICKINSON: I knew that corporation had been merged in the other and you are asking about the Sheet Steel Company, and that could not apply at this time.

MR. LINDABURY: My question was a little blind. I had forgotten that change.

THE WITNESS: And I corrected you.

By MR. LINDABURY:

Q. You have corrected me that the Sheet Steel Department of the Steel Corporation (which is a good name for it) has increased its output but that its percentge of the total output has steadily decreased?

A. Yes.

Q. You mentioned yesterday the fact that when you changed your price on some of your products a year or more ago, you informed Judge Gary?

A. I did.

Q. And other manufacturers.

A. I did.

Q. Of your intention.

A. I did.

Q. When you informed Judge Gary and your other competitors a year or so ago of your intention to reduce the price of some of your products, why did you do it?

A. As a matter of business courtesy.

Q. Had you ever entered into any obligation to do it?

A. No, sir; I did not consider I had.

Q. Was the information given from any sense of contractual or other obligation?

A. None whatever.

Q. When was it that you gave this information?

A. I met Judge Gary and a number of other manufacturers in our own line of product, during a meeting of the Iron & Steel Institute in the rooms of the Iron & Steel Institute.

Q. And where was that meeting?

A. In the Hudson Terminal Building.

Q. And when was it, approximately?

A. Some time after May 24th.

Q. Did you give the year?

A. I think it was May 24th.

Q. What year?

A. 1910, I think.

MR. REED: 1911, wasn't it?

THE WITNESS: 1911, was it?

MR. SEVERANCE: Last year.

THE WITNESS: Last year.

By MR. LINDABURY:

Q. That would be 1911?

A. 1911.

Q. How long has this Iron & Steel Institute been in existence?

A. A couple of years.

Q. Are you a member of it?

A. Yes, sir.

Q. And many manufacturers?

A. All of the manufacturers and many of the merchants of the United States.

Q. How many persons were in attendance upon that meeting?

A. Eight or ten.

Q. Was this a regular meeting or a special one?

A. It was a meeting, as I recall it, of the directorate of the Institute, of which I am a member, and I took advantage of the opportunity to convey the information that I desired to spread, and this was also published.

Q. Was the meeting called for the purpose of giving this information or taking any action upon the subject?

A. I do not recollect.

Q. Now, with respect to the Republic Iron & Steel Company. I think you stated that that company had a considerable amount of ore down in the Birmingham district.

A. We had.

Q. Would you mind telling us how much?

A. I think we publish about 88,000,000 tons as our reserve.

Q. What is your annual draft on that?

A. Something like 700,000 tons a year; 650,000 to 700,000, roughly.

Q. That, at the present rate of consumption, therefore, gives you a supply for two or three hundred years, does it not?

A. A great many years, yes.

Q. I believe you stated that you have ores in the Lake Superior District also, did you not?

A. We have.

Q. And have you not some also in Canada?

A. We have not.

Q. None in Canada?

A. No, sir.

Q. Have you any ores outside of those two districts?

A. We have not.

Q. How much have you in the Lake Superior District?

A. 40,000,000 tons, approximately.

Q. And what is your annual draft on that?

A. About 2,500,000 tons.

Q. Do you remember what your average draft on the Lake Superior mines has been during the last three years? Looking

at your annual report I make it somewhat different from what you have stated.

A. I would say approximately from 1,500,000 to 2,000,000 tons. It varies somewhat.

Q. I think it amounts to a million and a third, does it not, during the last three years?

A. You mean an exact average for the three years?

Q. Yes.

A. It might have done so. I say a million and a half approximately.

MR. DICKINSON: Maybe I misunderstood you. I understood you to say half a million.

THE WITNESS: A million and a half.

By MR. LINDABURY:

Q. You are speaking of the present time?

A. The average for the last three years I would say would be a million and a half. If you have the figures from our report, which are accurate, it may have been 1,300,000.

Q. What are the names of your mines?

A. I could not name them; there are a great many of them.

Q. They are on the Missabe Range?

A. On all the ranges.

Q. Chiefly on the Missabe?

A. Largely.

Q. Any on the Vermilion?

A. I think not.

Q. Any on the Marquette?

A. Yes.

Q. The Menominee?

A. Yes.

Q. Gogetic?

A. Yes, sir.

Q. Then on the basis of a million and a half a year you have a supply for some twenty-five years, have you not?

A. Approximately so.

Q. And do you think it is necessary for a manufacturing company to have a supply that will last that long?

A. They should have a supply lasting longer than that.

Q. And is it desirable in the business in which you are engaged for a company to own its ore property rather than to purchase its supplies in the market?

A. Essentially necessary, in my opinion.

Q. In speaking of ownership, I did not mean in fee as distinguished from leasing. I do not know whether you did or not.

A. I did not express it.

Q. You did not mean to distinguish between owning in fee or owning by way of leaseholds?

A. I did not.

Q. But one way or the other you think it is essential?

A. Absolutely so.

Q. You think a corporation ought to have a supply exceeding 25 years?

A. Unquestionably so.

Q. What length of supply ought they to have?

A. I would feel much more comfortable with 50 years' supply, rather than 25.

Q. Taking the Birmingham and the northern ores together, you have an average supply in excess of 50 years?

A. Yes, but you can hardly apply it that way on account of the unavailability of the southern ore for northern operation.

Q. You have to take them as separate properties?

A. You have to treat them separately.

Q. When did you acquire your northern ores, over what period?

A. During my administration I have more than doubled our ore reserves.

Q. When did your administration commence?

A. Within about six years.

Q. Six years ago?

A. During all that time.

Q. Did the company have about half of its northern ore before that time?

A. We had about 19,000,000 tons when I took charge of the property.

By MR. DICKINSON:

Q. That is six years ago?

A. Approximately that; yes, sir.

By MR. LINDABURY:

Q. Why have you added so largely since?

A. In order to take care of large investments in manufacturing properties and blast furnaces.

Q. Because you needed them in the development in the future of your operations?

A. Absolutely so.

Q. How lately have you made purchases?

A. We have developed the Potter mines within the last year.

Q. When did you acquire your southern ore property?

A. During the early part of 1906, we added nearly double our holdings there; that is, the Potter ore properties that I acquired at that time.

Q. Have you purchased any southern ore properties since 1906?

A. I have not.

Q. So that about half of the southern ore properties were owned by the company at that time?

A. Approximately so.

Q. What plants did the Republic have at first? That is, where were their plants located in the development of their business?

A. We had originally something like 29.

Q. Located where?

A. Scattered operations, almost entirely engaged in the manufacture of iron, scattered over eight or ten states. I do not remember exactly.

Q. Did you manufacture pig iron?

A. We manufactured bar iron.

Q. When were they bought?

A. In 1901, I think from memory, that was the date.

Q. Were any of them in the South?

A. Two.

Q. Where were they?

A. One at Birmingham and one at Gate City.

Q. Where is Gate City?

A. A short distance from Birmingham, Alabama.

Q. They are both in the Birmingham district?

A. Yes, sir.

Q. Where were the northern ones?

A. Well, we had plants located in Ohio and Pennsylvania.

Q. Give the places, please.

A. We had one at Toledo, one at Massillon, one at Sharon, Pennsylvania; three at Youngstown, St. Louis, Chicago, Moline, Illinois; Keokuk, Iowa; Muncie, Indiana, and one at Anderson, I think, and at Brazil, Indiana, two in Alabama, and there were a number of small scattering plants elsewhere. I think there was one at Muskegon, Michigan, and one at Cincinnati.

Q. You said these plants were manufacturing iron. Were they selling it in the market?

A. They were.

Q. In interstate trade?

A. They were.

Q. When did the company begin the purchase of ore properties?

A. It had some ore properties at the time of its inception, a very small amount, six or eight million of tons, as I recollect the history.

Q. Had those plants been engaged in this before the Republic purchased them?

A. They were.

Q. Now, about the additions, how were they made and when?

MR. DICKINSON: This is excepted to as irrelevant, incompetent and having no bearing whatever upon the issues in the case.

By MR. LINDABURY:

Q. What about the additions to the plants of the company? When were they made?

A. I think our Bessemer plant was started in 1903, to the best of my recollection.

Q. Where.

A. At Youngstown, Ohio.

Q. Go ahead and give us the development.

MR. DICKINSON: Just wait a minute. Without repeating my exception, it is understood, is it, that this exception applies to all this character of questioning?

MR. LINDABURY: Yes.

A. I think in 1904 we made some additions to the Bessemer plants, some changes, and in the early part of 1906 I made some very radical changes in the Bessemer, more than doubling its output, and then during the last two years or eighteen months we have again increased our steel capacity.

By MR. LINDABURY:

Q. Where?

A. At Youngstown, and we have practically eliminated all of our scattered iron mills, have concentrated them in the operation at a few points of production, so to-day we produce practically but little iron, and are manufacturing about a million tons of steel per annum.

Q. This I take it was what you call an integrating process, was it not?

A. Yes, sir; that was part of it, the addition of the mineral and coke and blast furnaces, and balancing up operations generally, completed the integrating process.

Q. So that you were able to handle every feature of the process from the mining of the ore to the putting on the market of the finished product?

A. Everything except transportation.

Q. And so far as transportation is concerned, I understand you owned a fleet of vessels on the Lakes to bring your ores?

A. We have three vessels we own, and have an interest or a part interest in some others.

Q. So that the transportation deficiency you referred to related chiefly to the railroads?

A. Entirely so.

Q. Entirely to the railroads?

A. Yes.

Q. You are adequately supplied with Lake facilities?

A. No, not quite; not balanced up. We are large carriers on the Lakes in addition to our own fleet.

Q. There are a good many independent lines of transportation on the Lakes, I believe?

A. A great many.

Q. I judge from your testimony that this integrating process that you spoke of attended your development of the steel end of your business. Am I right?

A. You are.

Q. You did not need that so much, or at all, when you were simply manufacturing iron?

A. No. It was done for economic reasons, and also for trade reasons.

Q. Connected with the making of steel——

A. On account of the increasing demand for steel and the decreasing demand for iron.

Q. And when was it you began to develop the steel end of your business?

A. As I stated a while ago, I think it was 1903 that our Bessemer plant was put up. That was the beginning of our steel business.

Q. And about your Southern development, you told me that you began with two plants down there, two blast furnaces, was it?

A. Rolling.

Q. Two rolling mills in the Birmingham District?

A. Yes.

Q. And what have you done down there in the way of developing plants?

A. Nothing in the way of extending plants, nothing——

Q. You have not added new plants, but have extended them?

A. We acquired the blast furnaces and mineral properties about the time we acquired the Southern rolling mills, at the time of our merger.

Q. Has your product in the Southern field increased?

A. It has.

Q. Largely?

A. In pig iron very substantially.

Q. And in steel, has it?

A. We make no steel.

Q. Were the two plants that you acquired in the Birming-

ham district operated before their acquisition by your company?

A. Our two rolling mills? Oh, yes, and some time since. They were operated prior to our acquisition, and for a number of years after our acquisition, but are not operated at present.

Q. Were they separately owned before the acquisition?

A. They were.

Q. And were operated independently, I suppose?

A. They were, so far as I know.

RE-DIRECT EXAMINATION,

By MR. DICKINSON :

Q. You were asked whether or not you had boats for the transportation of ore, and you said that you had?

A. We have.

Q. Have you any railroads?

A. We have not.

Q. Are you a competitor of the United States Steel Corporation?

A. We are.

Q. State whether or not you are at a disadvantage with the United States Steel Corporation on account of its ownership and control of ore carrying railroads?

A. We are.

Q. Explain how that disadvantage operates. Explain it fully, please.

A. In lower cost of transportation that they have. Of course that means higher cost to us.

Q. A higher cost to you is to your disadvantage and that goes to them, does it?

A. As far as they carry it.

MR. LINDABURY: I object to that as leading and asking for an opinion.

By MR. DICKINSON :

Q. It goes to them as a profit, does it?

A. To the extent they carry it.

Q. And to that extent you suffer a disadvantage with them as competitors?

A. We do.

Q. Do you feel that disadvantage in the trade?

A. Naturally we would.

Q. And do?

A. Certainly we do.

Q. When your corporation was formed, what was the capital stock?

A. \$22,000,000.

Q. What is it now?

A. \$22,000,000 of preferred stock and \$27,000,000 of common stock. It is now \$25,000,000 and \$27,000,000.

Q. You were then, I believe, producing iron and not steel?

A. Yes.

Q. What proportion of all the iron produced in the United States did your company produce following the organization and taking in of these new companies?

A. I could not tell. It has been a good many years ago, and I was not particularly interested in the matter, and had not looked up the statistics.

Q. Now you are making entirely steel?

A. No, largely steel, I said.

Q. What proportion do you produce of all the steel produced in the United States?

A. About as one million is to twenty-five million.

Q. About one-twenty-fifth.

A. Approximately so.

Q. And what proportion do you produce of the iron that is produced in the United States?

A. We are making about 100,000 tons, and I would say that there are, approximately speaking, two and one-half or three million tons produced in the United States at the present time.

Q. So the proportion would be the proportion of 100,000 to two and a half or three million. Is that correct?

A. Approximately so.

Q. Have you bought any ore in the Birmingham District since 1906?

A. We did during 1906.

Q. But since 1906?

A. We have not.

Q. Mr. Topping, state who were the large holders of iron and coal properties in the Birmingham District in 1907, before the United States Steel Corporation acquired the Tennessee Company?

A. The Tennessee Coal, Iron & Railroad Company; the Republic Iron & Steel Company; the Sloss Iron & Steel Company; the Birmingham Iron Company; they were the principal owners of iron ores in the way of operating companies, although outside of those companies there was quite a large amount of undeveloped ore held by individuals in fee.

Q. They are largely scattered, are they not?

A. Some of them are, and some of them are not.

Q. Are any of those in large bodies?

A. Some are in bodies sufficiently large to operate, yes.

Q. What do you mean by that, that they are in bodies sufficiently large to operate?

A. To make an operation of an economic unit.

Q. For what sized concern, how many furnaces?

A. I should say that there would be no difficulty in operating two blast furnaces.

Q. Can you give the name of any single holder, outside of those you have named, of iron properties in the Birmingham District, or available commercially for the Birmingham District, that exceeds 20,000 acres in any one holding? If so, name who they are.

A. You would not have to have 20,000 acres——

Q. I am not asking you whether you would have to have 20,000, but asking you whether you know anybody that has as much as 20,000 acres, or had that much at that time, outside of these other companies that you are speaking of?

A. There are no 20,000 acre blocks that I know of.

MR. LINDABURY: A humble individual does not inherit as much as that.

By MR. DICKINSON:

Q. Were there any companies holding 20,000 acre blocks at that time, other than those you have named?

A. I think not.

Q. What do you mean by blocks?

A. I mean a large body.

Q. You mean together?

A. Certainly; blocked up, solidified, squared up.

Q. You mean lying contiguous?

A. Certainly.

Q. Outside of those you have named did you know of any holdings in the Birmingham District by any company or individual at that time in 1907 to the extent of as much as 10,000 acres of available commercial ore?

A. I could not designate the name of any one owner of 10,000 acres, no.

Q. You knew generally the character of the holdings of the iron ore properties that were adjacent to the Birmingham district and available for use there, did you not?

A. I have a map of the district. I do not carry those things in my mind, Judge Dickinson.

Q. I understand. I am not asking you for the minute details, but you did know generally?

A. Naturally I do.

Q. In 1907 did you know of any large holdings outside of the companies that you have named? If so, state who they were and the extent of those holdings, as near as you can remember.

A. I cannot give you that information from memory.

Q. You said that you had approximately eighty-eight million tons of iron in the Birmingham District?

A. I did.

Q. How many acres did that cover?

A. I do not remember.

Q. About how much?

A. Well, iron ore in that district yields about forty thousand tons to the acre.

Q. Does it all run evenly?

A. Approximately so, red ore.

Q. So you think that eighty-eight million tons on that basis of yield per acre would indicate the acreage your company had?

A. Approximately so. It should, with the exception of the brown ore holdings, which you cannot estimate in that way.

Q. That lies in pockets, does it not?

A. Yes, sir.

Q. And is very variable, is it not?

A. Yes, sir.

Q. You work out a pocket here, and then have to move over to another place and prospect there?

A. Not at all. You work around a line post or barren spot.

Q. Brown hematite ore, is it?

A. Yes, sir. It is more of a gopher operation.

Q. You were asked about the supply of ore that was in your judgment proper for steel operation looking to the future. I will ask whether or not the iron ore in the Birmingham district was available for the operation of any of the works of the Corporation north of the Ohio River?

A. I think not.

Q. Was there any need of it for the operation of those works north of the Ohio River?

A. I should say not.

Q. Can you recall the date or the day of the week when you notified Mr. Gary and others that you were going to change your prices?

A. I do not and cannot.

Q. Do you know the month?

A. I think it was in May.

Q. Was it in the forenoon or in the afternoon?

A. My recollection is shortly after luncheon, or about one o'clock.

Q. And you say the meeting was in the room of the Iron & Steel Institute?

A. It was.

Q. Was it a called meeting?

A. It was to the best of my recollection.

Q. At your request?

A. No, sir.

Q. Was it a regular meeting?

A. It was.

Q. You attended a regular meeting and then brought this matter up?

A. I did.

Q. Now, Mr. Topping, state, so far as you can, all the individuals who were present at that meeting.

A. I do not know that I can recall all; I can name some.

Q. Name those that you can.

A. Mr. Clark.

Q. Give his initials, will you not.

A. E. A. S. Clark.

Q. State who he was and what his position was.

A. President of the Lackawanna Steel Company.

Q. Yes?

A. Mr. Farrel, Judge Gary was there.

Q. Mr. Farrell, the president of the Steel Corporation?

A. Yes.

Q. And Judge E. H. Gary?

A. Yes. Mr. Willis L. King of Jones & Laughlin.

Q. Vice-president, is he not, of the Jones & Laughlin Company?

A. Yes, sir.

Q. Well?

A. Mr. James Campbell, om the Youngstown Sheet & Tube Company, I think was there. I think Mr. Edward Bailey, of the Central Iron & Steel Company was there.

Q. Edward Bailey?

A. Yes, sir, I think so; and of course the secretary of the Institute was there, Mr. James McCleary.

Q. State what kind of a notice you gave, what you said in regard to cutting prices.

A. I would not put it in that way.

Q. Well, reducing prices, then.

A. I stated to them that I regarded competition and the conditions of trade such that it was to my interest to reduce the prices, and that was what I intended to do.

Q. Did you make any explanation of the conditions of trade, why you had come to that conclusion?

A. I explained that in my published notice.

Q. Your published notice did not ante-date this meeting, did it?

A. No; but the published notice was presented at the meeting.

Q. Was presented at the meeting?

A. I told them what I was going to announce.

Q. Previous to that you had not given any notice, had you?

A. I had not; it was not necessary.

Q. I did not ask what was necessary. I am just asking what you did.

A. I did not.

Q. Was there any discussion there in regard to your reducing prices?

A. There was not very much use of a discussion, and, as a matter of fact, there was not a discussion when I announced my intention.

Q. No objections were raised by anybody?

A. None whatever.

Q. Nothing said about it one way or the other in the way of comment?

A. I do not recollect any specific remark. Naturally they regretted that I felt there was a necessity of changing our policy.

Q. You say naturally they regretted it?

A. They might regret it?

Q. Was that an inference of yours, or from what was said?

A. Nothing was said of a specific nature that I recollect.

Q. Then so far as you recollect, so far as that question is concerned, you simply announced the reduction, and showed the publication you were going to give out?

A. Yes.

Q. And that constituted the whole colloquy on that subject?

A. That ended the chapter, so far as I was concerned, as I felt I was under no obligation to do other than what I thought was right in the interests of our company.

Q. How did it affect the interest of your company to give them notice?

A. A matter of business courtesy.

Q. Just a matter of business courtesy. Did they not understand that before you made any reduction of price you would give such a notice?

A. I do not know what their understanding was.

Q. Did you not understand that they expected you to give such a notice before you reduced prices?

A. I think that I was morally obligated, as a matter of

courtesy, in other words, to give such notice, but I was under no obligation.

Q. You mean you were under no contract or agreement?

A. None whatever.

Q. What do you mean by your being morally obligated? What was the foundation of that moral obligation?

A. A matter of common decency.

Q. A matter of common decency?

A. Yes, sir.

Q. Had you always in the pursuit of your business, with all your competitors throughout the period of your life anterior to that, given them notice when you were going to reduce prices?

A. I have always felt and have always tried to live up to a standard of common decency in my business.

Q. I am not asking you whether you lived up to a standard of common decency in your business. I am asking you whether previous to that time when you reduced your prices, you gave your competitors in that line of business notice that you were going to reduce prices?

A. I may and may not have done it heretofore.

Q. Had it been your practice, and, if so, for how long?

A. We had no established practice in matters of that kind.

Q. You did consider it common decency, however, to do it?

A. Under those circumstances, yes.

Q. Under what circumstances?

A. Under the circumstances that then obtained.

Q. What were those circumstances?

A. Exchanging business information and trying to help one another in our general operations.

Q. Trying to help one another in your operations?

A. Naturally.

Q. What do you mean by operations?

A. In the general conduct of our business, exchange of opinion.

Q. You were trying to help your competitors in the conduct of their business?

A. I was trying to help myself in the conduct of my own business.

Q. And you were trying to help yourself in the conduct of

your own business by telling your competitors when you were going to change the prices?

A. Not necessarily.

Q. That is what you did in that instance, is it not?

A. We preferred to get information from each other rather than from our customers. The buyer is more likely to mislead than the seller.

Q. Now you say you felt under a moral obligation to give that information?

A. Because we were exchanging general information.

Q. And was it not because there was an understanding with you that you would exchange information in regard to reduction of prices before you put those prices into effect?

A. There was no understanding, Judge Dickinson.

Q. Did you attend a dinner given in New York on January 11, 1911, which was commonly referred to as a Gary Dinner?

A. I attended a great many dinners; all of them, possibly.

Q. Did you attend that dinner?

A. I do not remember the date; probably I did.

Q. Probably you did?

A. I do not think I missed any of them.

Q. Did Judge Gary make a speech at that dinner?

A. He always did.

Q. He made one, then, at that dinner, did he?

A. I think so.

Q. Mr. Topping, state whether or not at that time there was a demand in the country for more than 50 per cent of the total producing capacity in the lines of those people who were represented at that dinner on that occasion?

A. I think there was.

Q. Was there enough business to go around for all those who represented concerns at that dinner who were competitors in the same line of business?

A. I hardly think there was.

Q. Was there or not an understanding of those present that there was a necessity for protecting themselves from competition on account of the shortage in business and the inadequacy of the demand for their products?

A. No, sir. There was an understanding, however, that

there was a necessity to protect our own customers at that time against a break in prices.

Q. You heard Mr. Gary speak at that dinner, did you?

A. I did.

Q. Did you or not hear him say that there was not at that time in the country a demand for more than 50 per cent of the total producing capacity in the lines there represented?

A. He may have said that, but I do not agree with him.

Q. But you do agree with him that there was not enough business then to go around?

A. I do.

Q. Did you hear him say at that dinner that there was no possible way of your protecting yourselves from competition except by coming to an understanding that each would be satisfied with a proportion of the business?

A. I have no recollection of it in the way in which you have just put it.

Q. Was there an understanding upon your part at that time that the meeting was for the purpose of so operating that no one would seek to reduce the proportion of business at that period that was controlled by any of his competitors?

A. The only understanding, Judge Dickinson, that I had at that time, was the necessity for protecting my own customers. He had more requests from our own buyers of material to maintain our prices, and the pressure was stronger at that time from our own customers than it was from the manufacturers, in order that they might liquidate their surplus stocks in the time that that price scale existed.

Q. Did you understand, then, that none of you would compete for the recognized business of the other?

A. We did not have any understanding of that kind.

Q. Did you hear Judge Gary make a statement to that effect?

A. I have no recollection of such a statement.

Q. What percentage of the iron and steel trade in the United States was represented at those meetings, so far as you remember?

A. A very large proportion.

Q. Upwards of 90 per cent?

A. Possibly so.

Q. To the best of your information and belief, was it so?

A. I would say so; maybe more.

Q. Did or did not those meetings result in maintaining prices?

A. The effect of them was to maintain prices.

Q. Was there any understanding among you that you were bound to protect one another?

A. None whatever.

Q. Did you hear Judge Gary state that you were bound to protect one another, at that meeting?

A. I have no recollection of his specific statements on the subject.

Q. Did you hear him say that to carry out that purpose your honor was at stake and that the obligation binding on you was even dearer than life itself?

A. I had no impression in my own mind that the necessity was dearer than life.

Q. Did you understand him, or hear him say, that none of you should act or fail to act except with the distinct and clear understanding that his honor was involved?

A. I did not.

Q. You did feel, however, that your honor was involved in the question of whether you would or would not give notice to Judge Gary and these others, before you reduced your prices, did you not?

A. For the reasons I stated a while ago.

Q. That is to say, you felt there was a moral obligation and that you were in honor bound before you reduced those prices to give notice to them; is that correct?

A. I would not put it quite that way.

Q. How would you put it, Mr. Topping?

A. Common business decency; for the reason that we had been co-operating for the protection not only of our own particular interests, but for the protection of our customers at that time as well.

Q. You felt you were in honor bound to give that notice before you reduced your prices?

A. I would hardly express it as strongly as that, "in honor bound." I was perfectly free to do what I pleased, and use my own business judgment, and I did use it.

Q. You said you felt you were morally bound, did you not?

A. In the sense that I did use that term—as a matter of business courtesy.

Q. In what sense did you use it?

A. Business courtesy, pure and simple.

Q. How was that?

A. Business courtesy, pure and simple, because we had been exchanging general information and I thought it proper to give them that information.

Q. You expected, didn't you, before they reduced prices that they would give you like information?

A. For the same reasons that I exercised in my case.

Q. That is to say, it was mutual, was it not? You did notify them, and you expected them to so notify you? You exercised the golden rule, did you not?

A. You might apply it in that way.

Q. Is it not that true? If it is not, state what is correct, please?

A. I have put it as clearly as I can: business courtesy and common decency suggested my course of action, which I followed.

Q. I asked you a little bit more, if you did not, from the association that you had, and the understanding that you had with these gentlemen, expect that they would exercise a like business courtesy and a like common decency towards you before they reduced their prices?

A. I did not always realize that expectation.

Q. I am not asking you what you realized, but I am asking you what you expected from the association and the way that you had formed your ideas of your moral obligation in the matter. Did not you expect the same from the others?

A. From some I did, and others I did not.

Q. How about the Steel Corporation?

A. I expected the same.

Q. Did you expect the same from them?

A. I expected the same courtesy from them.

Q. How about the Lackawanna. Did you expect it from them?

A. I think I would.

Q. How about the Pennsylvania. Would you expect it from them?

A. I would put them on that honor roll.

Q. I will not embarrass you by asking you as to any that you would not put in that class.

A. Those I reached by public notice I did not expect it of, and that is why I published that notice.

Q. So you reached two classes?

A. So they would get the information I wanted to convey and get it quickly.

Q. How?

A. I published it so they would get the information I desired to convey, and could not convey personally, so I utilized the press.

Q. There was one class you had a feeling of reciprocity towards, and you gave them notice?

A. There was one class I had rather more confidence in than the other.

Q. You felt that there would be a reciprocal sense of moral obligation, did you, as to those?

A. There was reciprocity on anything.

Q. I mean on the question of notice before the reduction of prices, you expected the same of them, didn't you?

A. I said as to a few, yes.

Q. A few?

A. And many, not.

Q. And you covered those with a blanket publication, so as to be fair to all of them, even though you might not have confidence in some of them being fair to you. Is that correct?

A. I cannot answer the question in that way.

Q. Answer it in your own way, Mr. Topping. I do not want to dictate your answers.

A. I think I have answered it as clearly as I can. I desired to convey the information and I utilized the best means at my command for conveying it and doing it quickly.

Q. You covered all classes?

A. I did.

Q. You did not go quite as far as Judge Gary in thinking that the obligation or understanding, or whatever it was, was dearer than life?

A. I did not quite agree with him on that subject.

Q. Did you, at that meeting, protest against any of his pronouncements?

A. I certainly did not. It was hardly a proper place to disagree with a man, at a banquet table.

Q. We have heard of some disagreements at a banquet table, haven't we.

A. A feast of reason and a flow of the soul is usually the situation at the Gary dinners.

Q. Upon whose invitation did you go to those dinners?

A. Judge Gary's, usually—I think entirely so.

Q. Do you recall that he admonished you at that dinner that you should not forget the high moral obligation that you owed towards your neighbors?

A. Oh, I think in a general way; yes.

Q. And that it was of the highest importance, at that particular time, that every one of you should have a keen and abiding sense of the personal obligation which he had toward each of the others?

A. I was not impressed quite as seriously as the report that you have would suggest.

Q. Do you mean to say that you did not hear it or were not impressed?

A. I allowed some discount.

Q. You took it *cum grano salis*, did you?

MR. LINDABURY: Now, wait a minute. Let us get that discount.

A. I applied the usual discount to post prandial efforts and allowed for that in my conclusion.

By MR. DICKINSON:

Q. Do you recall that you were admonished to make no mistake of running the risk of trespassing within the domain of the rights of your neighbors who had given you their confidence and trust?

A. Possibly I felt that I did not need it.

Q. I am not asking you what you felt. I am asking you if you heard him admonish you in that manner?

A. I do not recollect, Judge Dickinson, the speeches in

detail. The general effect of the speeches, of course, I have in my mind, but I did not attach a great deal of importance to the general talk about the banquet table. Good fellowship was the principal feature we were interested in, and in having a good time.

Q. Ninety per cent. of you came from all over the country, did you, for good fellowship?

A. Why, certainly.

Q. How long had you been indulging in this kind of good-fellowship? For how many years?

A. Not as long as we should have been.

Q. I am asking you how long?

A. It was a Gary invention, pure and simple.

Q. I am asking you, Mr. Topping, if that invention did not follow hard upon the breaking up of pools and combinations which had before that controlled prices?

A. I was never in a pool, so I do not know.

Q. What do you mean by saying that you were never in one?

A. I never participated in one.

Q. You mean personally?

A. Personally. I would have done so had I had the opportunity.

Q. Who barred you?

A. Conditions were not favorable to my own products. That is the only answer I can give you.

Q. What did you understand a pool to be? You said you would have participated if you had had a chance. In what sense are you speaking of a pool?

A. Any pool that would have regulated the selling price of the products I was interested in, that would have secured better profits for the products I sold, would have been a very desirable thing to have entered.

Q. That is to say, if producers making like products entered into an agreement by which they fixed prices?

A. To maintain a profitable selling price, and to have a penalty attached, a penalty for excess production and such features; what is commonly known as a pool arrangement.

Q. And you would have availed yourself of the opportunity to go into such a pool if you had had the chance?

A. Yes, sir.

Q. Is that in line with the moral sense that actuated you to notify Judge Gary that you were going to reduce your prices?

A. Pools were thought to be a good thing before the Sherman Law was put into effect and prohibited such arrangements; they were thought to be a desirable thing.

Q. They would be desirable now, if they were lawful, would they not?

A. We need them to maintain a reasonable profit in the business; yes.

Q. Coming back to the National Steel at the time of its formation, state what makers of crude steel in Ohio and Pennsylvania were left outside of that organization at the time of its formation.

A. The Ashland Steel Company, of Ironton, Ohio.

Q. The Ashland Steel Company?

A. Yes, of Ironton, Ohio, or Ashland, Kentucky. The two towns are adjoining.

Q. Go on.

A. The Jones & Laughlin Steel Company; the Wheeling Steel & Iron Company; Otis Steel Company. There may have been others.

Q. Is that all you can name?

A. There may have been others.

Q. I say, is that all you can recall?

A. Yes. They are still independent, I think. I think all of them are still independent.

Q. What was the capacity of the Ashland Steel Company, if you know?

A. They have a Bessemer plant. I do not remember. I should say, from the size of their converters, possibly 300,000 tons. That might be a fair estimate.

Q. 300,000 tons per annum?

A. 300,000 tons per annum.

Q. What was the capacity of the Jones & Laughlin Company?

A. What it was at that time I do not remember. Possibly half a million. It is something over a million now.

Q. I am speaking about that time. The Wheeling Steel & Iron Company?

A. I should say about 300,000 tons.

Q. And the Otis Steel Company?

A. Somewhere near the same capacity, I would say. Theirs is an open hearth plant.

Q. What was the capacity of the combined concerns at that time, at the time they went into the National Steel Company?

A. I do not recollect.

Q. Well, give it approximately, as near as you can give it.

A. I would rather not make an estimate, because it is rather a complicated proposition, and I might be widely wrong in my estimate. It took in a good many plants and properties, the conditions of which I do not remember exactly.

Q. State whether or not their combined products were larger than the combined products of these you have named?

A. Yes; decidedly so.

Q. Much larger?

A. Considerably larger.

Q. I will ask you whether or not in any respects what you have spoken of as the Moore Group of properties were in competition either with the Federal or the Carnegie Company at the time the Corporation was formed, whether they were in competition in interstate commerce.

A. In what products?

Q. I am just asking you for information.

A. The general question?

Q. Any products. I will ask you to name the products, if there are any.

A. I think I answered that yesterday, "to a limited extent only," and it comprises billets, crude material more particularly. I do not think the National Steel group or the Moore group made anything of a competitive character with the Carnegie Company, so far as I recollect, except crude material.

Q. How about tin bars?

A. That is included in crude material. That is to a limited extent only, for the reason that the group of companies referred to, the Moore group of companies, was supposed to

consume the entire output of the National Steel Company, and as a matter of fact did, and at times bought steel outside.

Q. At other times, I understood you to say, the National Steel Company did sell in competition.

A. When finishing business was down, they may have sold at times semi-finished material to outsiders.

Q. And in competition with the Federal and Carnegie?

A. To that limited extent.

Q. When did you first hear that the United States Steel Corporation was about to purchase the stock of the Tennessee Coal, Iron & Railroad Company?

A. (Referring to memorandum.) I can tell you almost exactly. I sent the notice on November 5, 1907, notifying our directors of the meeting at which that subject was to be discussed. So it was prior to November 5; it was possibly November 3.

Q. Do you remember what day of the week it was?

A. No, I do not. You can figure that out.

Q. Is that the day you got your first notice of the contemplated purchase?

A. Yes.

Q. State whether or not you understood that Mr. Schley was in such a condition that he had to sell that stock.

A. It was not put that way to me.

Q. What way was it put to you?

A. I do not know that I can recollect the specific language he used, but the information to me carried this thought: That it was necessary for him to sell it. I understood that in the sense that it was expedient for him to sell it, in other words.

Q. You mean a business necessity?

A. I understood it so.

Q. What price did you or your associates pay for the first stock you bought, when you acquired the control?

MR. LINDABURY: Objected to as irrelevant and immaterial.

A. I do not know what the average price was. It was acquired at different prices, from 80 up.

By MR. DICKINSON :

Q. I mean when the syndicate purchased—

A. The syndicate bought the stock at different prices during a period of time, in their effort to secure control.

Q. From 80 up to what?

A. Up to the point of control. It was not all bought at one time. It was gradually acquired in the market.

Q. I will ask you this: Have you anything to refresh your memory as to about what you paid for your stock?

A. I know what I paid for my stock.

Q. What did you pay for it?

A. My stock cost me 110.

Q. The stock you sold to the Steel Corporation cost you 110?

A. It did.

Q. Did all of it cost you 110? Did you not subscribe to some that you got at par?

A. I am talking about the original purchase.

Q. That is what I thought, but I did not want to confuse the matter. The stock that you had in the original syndicate cost 110?

A. That is what I meant by my answer.

Q. I understood it that way. Then subsequently you subscribed to stock at par?

A. I did.

Q. When the question of selling the stock to the Corporation came up, what was the first price you understood to be offered, if there was any offer?

A. I do not know as to that. That was a matter of negotiation that Mr. Schley conducted. I was not interested until the final price was put up to me as to whether I would sell or not.

Q. You do not know anything about the various prices that were considered and talked of before that?

A. I do not.

Q. What in money, taking the value of the bonds at that time, did you get for the stock?

A. I got 119 for my stock and took the bonds at par.

Q. How did that figure out?

A. It did not figure out at all, because I kept the bonds.

Q. That was what the others got, was it?

A. The bonds at that time were worth about 84, but I did not sell my bonds.

Q. That is what all got, they got the same?

A. Yes, sir; that was the price paid all stockholders.

Q. You were asked whether or not any pressure was brought to bear to bring about this sale, and you said you did not think so. Have you any information one way or the other on that subject?

A. I was answering as to the pressure brought to bear on me. I knew of none.

Q. And you were speaking of the pressure brought to bear on you?

A. Yes.

Q. And you did not undertake to say that you knew that no pressure was brought to bear on others?

A. I do not know anything about what others did, of course; but I think I would have known it had there been any.

Q. There are some things you did not know, are there not? That is to say, if there were any negotiations about prices before the final price offered to you, you did not know about that?

A. I think I would know what would go on in my own circle of associates, and I heard nothing of the kind, and of my own knowledge I know that no pressure was brought to bear on me.

Q. No; I am asking about the question of prices, if there were any prices talked of to start with other than the price at which the trade was made. If there was such a thing, you do not know it?

A. The price came up as a final offer, as to the final offer made Mr. Schley, and that same offer was tendered us, and that is the only consideration I gave the matter.

Q. You do not know about any negotiations at which other prices were considered?

A. I do not.

Q. There may have been a good many things that happened that you did not know anything about, might there not?

A. There might have been.

Q. Were you influenced in any way to sell by the financial

condition of the Tennessee Coal, Iron & Railroad Company at that time?

A. I was not.

Q. Did you sell on account of the unpaid subscription?

A. I did not.

Q. You were questioned, Mr. Topping, in regard to the cost of making iron north and south, and stated that in Chicago, at one of the works of the Corporation, basic and foundry iron could be made as cheaply as they could in Birmingham?

A. I did not say that.

Q. Did you not? Well, I misunderstood you. Please state what you did say in that connection, because I want to ask you about it.

A. I said that I would not be surprised to know that basic iron might be made by the corporation at Chicago as cheaply as it could be made at Birmingham at that time. That is what I said.

Q. Was that or not on account of the superior character of the works there compared to those in Birmingham?

A. Partly due to that and partly due to the fact that at that point transportation costs are light, and it is a cheap point of manufacture.

Q. Suppose the efficiency of the works were exactly the same, one located in the Birmingham District and one there in Chicago, could that point produce as cheaply as the Birmingham District could?

A. I do not think they could quite.

Q. Do you know any other point in the United States that would be as favorably situated as Chicago for that character of competition?

A. Lorain, Ohio, might be.

Q. Any other point?

A. Possibly Cleveland. Any Lake point.

Q. You said the Steel Corporation sold no pig iron?

A. I did.

Q. Did it sell any basic steel?

A. They did; a great deal of it.

Q. Did the southern works sell any basic steel in the northern market?

A. They did not.

Q. They sold pig iron, however?

A. Yes, sir; foundry iron.

Q. For what classes of work was this foundry iron sold?

A. Foundries.

Q. And what was it for?

A. Gray iron castings, stoves, and various products of that character; cast iron pipe, and so forth.

Q. Did the corporation make any cast iron pipe?

A. It did not.

Q. Or did any of its subsidiaries?

A. They did not.

Q. Is there any market in the north for basic steel made in the South?

A. They cannot transport it north.

Q. On account of the freight rates?

A. On account of the freight rates; in competition with northern steel.

Q. Can the northern works transport and compete in the South with basic steel successfully?

A. In many lines they do.

Q. In what lines?

A. Structural. We sell more or less steel to the South, all over the South, at the present time.

Q. That is structural material, is it?

A. Bars and various products made, railroad spikes, bolts, and nuts, plates; a little of everything.

Q. You were asked about the making of rails when you parted with the property. The machinery that you had for that purpose was not up to date, was it?

A. In very poor condition physically, and somewhat obsolete in type.

Q. Were you not preparing to put in a modern type?

A. We were.

Q. Did you not expect that would reduce the cost of production?

A. Naturally so. That is why we were selling rails at a loss, to hold the trade while the new mill was being built. That was the sole reason.

Q. You were asked about the approximate production

of sheet steel, and you stated that you thought the corporation produced about 50 per cent?

A. I did.

Q. And you were then asked whether or not it was a little less, and if the independents did not produce 53 per cent. You stated that three per cent would not make any material difference. What did you mean by that, Mr. Topping?

A. I meant that talking from memory, considering the many things I have to remember, the mass of figures that naturally go through my mind, that three per cent variation from the actual figures was not a bad guess.

MR. DICKINSON: I am through, Mr. Lindabury.

RE-CROSS EXAMINATION

By MR. LINDABURY:

Q. You were asked about the concerns making steel at the time the National Steel Company was formed, which did not go into or were not taken over by that corporation?

A. Yes, sir.

Q. And you named some?

A. I named some and stated there were others that did not occur to me at the moment.

Q. You did not name the Cambria?

A. No, sir.

Q. Was that in existence then?

A. Yes.

Q. A large concern?

A. Yes; one of the oldest.

Q. And it is still in operation?

A. Yes.

Q. And still independent of the National or any of its subsidiaries?

A. It is.

Q. The Pennsylvania?

A. I did not name the eastern plants, Mr. Lindabury, because I understood in the immediate neighborhood that would naturally compete with the National Steel Company.

MR. DICKINSON: My question was limited in territory, Mr. Lindabury, if you recall. It did not call for all the United States.

MR. LINDABURY: I did not understand that.

THE WITNESS: I did not cover the United States, because of his question.

MR. DICKINSON: My question was not broad enough.

MR. LINDABURY: Now we want the whole country, because this covers the whole country. This is not a local affair.

MR. DICKINSON: All right. But I want you to understand I limited the witness.

THE WITNESS: That is why I did not put in the eastern mills.

By MR. LINDABURY:

Q. Where is the Cambria Company?

A. Johnstown, Pennsylvania.

Q. You forgot that, I suppose?

A. I did.

Q. Because that is in the territory.

A. That would be naturally tributary to that territory.

Q. It is only a limited territory that is tributary to these different companies?

A. It is, on account of the sheet bars and billets, which are about the only products that the National was in competition with the Carnegie on at the time, and the consumption of those products is all in the greater Pittsburg district. That is why I restricted my answer.

Q. I want to know what prominent concerns there were making steel in the United States that were not taken into the National Steel Company, and you have named the Cambria. The Pennsylvania?

A. The Pennsylvania.

Q. Where is that?

A. At Steelton.

Q. An important concern?

A. Very.

Q. Still outside of any combination?

A. It is. Colorado Fuel & Iron Company.

Q. Where is that?

A. Pueblo, Colorado.

Q. Is that a prosperous concern?

A. Fairly so, I think.

Q. And large, is it?

A. Large, yes.

Q. It is making a good deal of steel, is it?

A. I think so.

Q. Maryland Steel?

A. Yes.

Q. Is that a large concern?

A. It is.

Q. Where is that located?

A. Sparrow's Point.

Q. Was it in existence when the National was formed?

A. It was.

Q. Has it remained independent ever since?

A. It has.

Q. What about the Lackawanna Steel?

A. At that time I think the Lackawanna Steel was at Scranton. They were rather a smaller concern at that time. They have since removed to Buffalo, and it is a newer creation at that point.

Q. How large is it now?

A. A million tons per annum, approximately.

Q. One of the large ones?

A. One of the largest independents.

Q. One of the most prosperous?

A. I would hardly characterize it as one of the most prosperous.

Q. Making a large amount of steel?

A. It is making a lot of steel.

Q. How much has it increased its capacity since the National was formed, roughly?

A. I should say doubled it.

Q. How about the Bethlehem, was that in existence then?

A. Yes; the Bethlehem was in existence at that time.

Q. Where is that, at Bethlehem, Pennsylvania?

A. I do not think, at that time, as I recall Bethlehem's product then, it would be termed a competitor, because they were engaged almost exclusively in the early days on armor

plate, guns and projectiles. They had a steel plant, but not a commercial steel plant. Since then they have built a commercial steel plant. I think I am right in that recollection.

Q. And they are manufacturing on a large scale?

A. They are.

Q. One of the largest?

A. One of them.

Q. Has their capacity increased in recent years?

A. Practically doubled.

Q. In what time has it doubled?

A. In the last six or eight years.

Q. From what it was in the preceding six or eight years?

A. In fact they have all doubled their capacity, substantially.

Q. What about the Inland Steel Company?

A. That is a newer creation.

Q. That sprang up when?

A. Within the last six or eight years.

Q. Is it doing considerable business?

A. Yes.

Q. And making a good deal of steel?

A. There are other steel companies in addition. The La Belle, quite a large works. Youngstown Sheet & Tube; Inland Steel.

Q. Go on. You know them better than I do.

A. A large number: it takes a large number for a large country.

Q. And many have come into existence, I take it, since the National was formed?

A. A great many have.

Q. Since the Steel Corporation was formed?

A. Some.

Q. That would be true too?

A. Yes.

Q. And have most of them increased their capacity since the Steel Corporation was formed?

A. I think they all have, as far as I remember.

Q. And would you say the majority of them have doubled their capacity since the Steel Corporation was formed?

A. I think that would be a fair statement of the fact, yes, sir.

Q. You were asked about the railroad business of the Steel Corporation, and you stated yesterday, and again this morning, that you shipped your ores from the mines to the Lake either over the Hill road, or over one of the two roads of the Steel Corporation?

A. I did.

Q. Can you tell me whether or not in the transportation of ore the Steel Corporation has discriminated against independents in the matter of service, so far as you know?

A. So far as I have any knowledge, I would say no.

Q. Has the service ever been other than fair and equal as between the shippers without regard to the Corporation's ore?

A. I think not.

Q. And how is the service compared with that of the Hill road?

A. That I cannot answer. I have no complaints to make in comparison.

Q. And have the rates been the same?

A. Always.

Q. And over what routes did you get the ore after it was delivered at the lower Lake ports? That is, did you have to use the corporation's roads for transshipment or transportation from the lower Lake parts to your works?

A. You mean from Cleveland and Connaut?

Q. Yes.

A. No; they do not serve our community. The Lake Shore and Baltimore & Ohio principally, and Pennsylvania.

Q. The Lake Shore, Baltimore & Ohio and Pennsylvania?

A. That is, from Lake Erie to the points of consumption, our works.

MR. LINDABURY: That is all.

MR. DICKINSON: I am obliged to you, Mr. Topping.

JOHN STERLING DEAN,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Dean, where do you live?

A. At Phoenixville, Pennsylvania.

Q. What is your age, Mr. Dean?

A. Fifty-three.

Q. How long have you lived at Phoenixville?

A. About thirty-two years.

Q. In what business are you associated there?

A. Connected with the Phoenix Bridge Company.

Q. That company is located there?

A. Located at Phoenixville yes, sir.

Q. How long did that company and companies to which it has become a successor in property been in operation? In other words, how long have those works been in operation?

A. There have been steel operations in Phoenixville for over a hundred years.

Q. What is the capacity of that company now?

A. As a fabricating Company, you mean?

Q. Yes.

A. About 75,000 tons.

Q. Comparatively is that a large or a small concern?

A. It is a fair sized concern.

Q. Mr. Dean, please state in some detail, or such detail as is necessary, the character of products made by that company and sold in interstate commerce in competition with the American Bridge Company or its constituent companies?

A. You refer to the Phoenix Bridge Company?

Q. Yes.

A. Their product is the heaviest class of railroad bridges and highway bridges, the heaviest class of highway bridges.

Q. Does it make any structural work?

A. Not directly, the Phoenix Bridge Company.

Q. How is that?

A. The Phoenix Bridge Company directly does not.

Q. Are you connected with any other company?

A. The Phoenix Iron Company.

Q. Is that a subsidiary, controlled by the Phoenix Company?

A. No; the Phoenix Iron Company controls the Phoenix Bridge Company.

Q. State what the Phoenix Iron Company makes and sells in interstate commerce in competition with the American Bridge Company, or any of its subsidiaries.

A. Structural material, buildings, floors, roof trusses, and so forth.

Q. Such as is used in these large buildings that are being put up now under modern plans?

A. Yes sir.

Q. I shall call over to you the names of certain companies and ask you in regard to their products, and ask you who they competed with in interstate commerce, either in bridge work or in structural material.

MR. LINDABURY: Is this from the bill?

MR. DICKINSON: Yes, I think this is in the order of which it occurs in the bill.

By MR. DICKINSON:

Q. Do you know the A. & P. Roberts Company?

A. Yes.

Q. That is commonly called the Pencoyd Iron Works of Philadelphia, is it not?

A. It is commonly called the Pencoyd.

Q. What did that company make at the time it was taken over by the American Bridge Company?

A. Bridges and buildings.

Q. Bridges and such structural work as goes into buildings?

A. Yes, sir.

Q. The Keystone Bridge Works, formerly of the Carnegie Company of Pittsburg; what did they make?

A. The same.

Q. State whether at that time those companies competed with either of your companies that you have mentioned?

A. Yes, they competed with us.

Q. In both classes of products?

A. In both classes of products.

Q. State whether or not they competed with each other in interstate commerce?

A. They did.

Q. Outside of the State of Pennsylvania?

A. Yes.

Q. They made and sold their products in competition with each other outside of Pennsylvania?

A. Yes.

Q. Where, generally?

A. Throughout the United States.

Q. What can you say about the products of the Berlin Iron Bridge Company, of East Berlin, Connecticut?

A. Their products I think were of a smaller character, but similar to those.

Q. Of the same type?

A. Of the same type.

Q. Were they or not competing for the same business as far as they were able, from the point of production?

A. Not in the large works.

Q. But they were competing in smaller works?

A. They competed in smaller works.

Q. Did they make a structural material or only bridges?

A. I think they made structural material and small high-way bridges.

Q. What did Post & McCord, of Brooklyn, make?

A. I think they were principally competitors in structural work, buildings, roof trusses and so on.

Q. Were they competitors with your company in structural work?

A. Yes.

Q. And with these other companies you have described as having made structural work?

A. Yes, sir; in a limited territory.

Q. But outside of New York?

A. Yes.

Q. What did the Elmira Bridge Company, of Elmira, New York, make?

A. Bridges and buildings.

Q. Bridges and structural material for buildings?

A. Yes.

Q. In what territory did they compete?

A. I think they competed throughout a number of States.

Q. Did they compete with any of the other companies I have mentioned making structural material?

A. Yes, sir.

Q. Now, take the Union Bridge Company, of Athens, Pa. What did it make?

A. Its principal product was bridges, and they competed throughout the United States with others.

Q. With the other bridge companies that made bridges?

A. Yes, sir.

Q. What did the Edge Moor Bridge Works make?

A. They made bridges principally, and buildings, and they competed throughout the United States.

Q. Was that a large or small concern?

A. A very fair sized concern.

Q. Did it compete with these other companies that have been mentioned?

A. It did.

Q. In interstate commerce and outside of the State of Delaware?

A. Yes.

Q. Take the Lassig Bridge & Iron Works, of Chicago, Illinois. What did they make?

A. That is the same; they built bridges and buildings and competed throughout the United States.

Q. In the way you have described as to the others?

A. Yes.

Q. Was that a large or small concern?

A. A good sized concern.

Q. Take the Shiffler Bridge Company of Pittsburgh, Pa.

A. They were a smaller concern, but they had similar products.

Q. And they competed similarly with the others?

A. Yes.

Q. Now take the Detroit Bridge & Iron Works of Detroit, Michigan?

A. Bridges principally, and buildings. They competed with the others and with us.

Q. They competed generally in interstate commerce?

A. Yes, sir.

Q. And outside of the State of Michigan?

A. Yes.

Q. Now take the Richester Bridge & Iron Works of Rochester, New York.

A. They were hardly competitors; they built bridges, though, smaller bridges and buildings.

Q. Small bridges?

A. Yes.

Q. State whether or not they constructed them outside of New York.

A. I think so.

Q. And to that extent they competed in that character of work?

A. Yes.

Q. Take the Groton Bridge & Manufacturing Company, of Groton, New York.

A. They were rather a local concern in highway bridges and small work.

Q. Take the Youngstown Bridge Company, of Youngstown, Ohio.

A. Yes, they competed.

Q. Was that a large or small concern.

A. Fair sized.

Q. What did they make?

A. Bridges, I think, principally.

Q. Principally bridges?

A. Probably buildings and structural work.

Q. Did they make railway bridges?

A. They made railway bridges.

Q. Did they make highway bridges?

A. Yes; highway bridges.

Q. They made bridges to go over rivers?

A. Yes.

Q. Were they competitors or not with these other companies?

A. I think they were.

Q. Outside of Ohio?

A. Yes, sir.

Q. Take the J. G. Wagner Company, of Milwaukee. What did they make?

A. They made bridges and buildings. They were competitors, general competitors, I think.

Q. Competitors of these other companies?

A. I think so, in a limited territory.

Q. Outside of the State of Wisconsin?

A. I think they competed outside of the State of Wisconsin; yes.

Q. Take the Wrought Iron Bridge Company, of Canton, I believe it is, Ohio.

A. Canton, Ohio.

Q. What did they make?

A. Their principal product was, I think, highway bridges, and they competed throughout several States.

Q. Outside of the State of Ohio?

A. Yes, sir.

Q. Now I will take the New Columbus Bridge Company.

A. I do not know them.

Q. Gillette-Herzog Manufacturing Company, of Minneapolis. What did they make?

A. I am not familiar with them.

Q. Do you know the Lafayette Bridge Company, of Lafayette, Indiana?

A. I think their product was principally highway bridges.

Q. Did they compete with these other companies?

A. I think so.

Q. Outside of Indiana?

A. I think so.

Q. That is the best of your knowledge, that they did?

A. They were not competitors of ours.

Q. But I am speaking of the other companies who went into the American Bridge Company who made that class of product?

A. I think so.

Q. Do you know the Pittsburg Bridge Company, of Pittsburg, Pennsylvania?

A. Yes.

Q. What do they make?

A. They make bridges and buildings.

Q. Are they a large or small concern?

A. Rather small at that time.

Q. Did they or not compete in interstate commerce with other companies in Pennsylvania?

A. I think they did.

Q. Did they compete with your company?

A. Not to any extent.

Q. What about the Schultz Bridge & Iron Company, of Pittsburg, Pennsylvania?

A. A similar concern, but a little larger; and they did compete.

Q. They did compete with your company?

A. Occasionally?

Q. And with these other companies outside of Pennsylvania?

A. Yes.

Q. Do you know the Buffalo Bridge & Iron Works of Buffalo, New York?

A. I am not familiar with them.

Q. Take the Koken Iron Works, of St. Louis, Missouri.

A. I am not familiar with them.

Q. The Hilton Bridge Construction Company of Albany, New York?

A. What company was that?

Q. The Hilton Bridge Construction Company.

A. They were entirely makers of highway bridges. I am not familiar with them.

Q. Do you know the Horseheads Bridge Company of Horseheads, New York?

A. They were highway bridge makers.

Q. Was that a large or small concern?

A. Small.

Q. Were they or not competitors in interstate commerce?

A. I should say so, with some of those in that list.

MR. LINDABURY: You mean competitors with everybody?

MR. DICKINSON : Yes.

By MR. DICKINSON :

Q. Take the American Bridge Works, of Chicago, Illinois.

A. Yes, sir.

Q. What did they make?

A. They made bridges and buildings, and they were a good sized concern.

Q. Were they or not a competitor?

A. They were a competitor with us and others in the west.

Q. And outside of the State of Illinois?

A. Yes.

Q. Do you know about the New Jersey Steel & Iron Company of Trenton, New Jersey?

A. Yes, sir; they were general competitors.

Q. Were they a large or small concern?

A. Fair sized.

Q. You say "general competitors." You mean in interstate business?

A. I think so.

Q. Did they compete with your company?

A. Yes, occasionally.

Q. And outside of New Jersey?

A. Yes.

Q. But you were competing with these other companies, were you not, in the business you were in?

A. Yes.

Q. And you met both of them as competitors?

A. Yes.

Q. Take the Toledo Bridge Company, of Toledo, Ohio.

A. They were makers of bridges, and I think at that time principally highway bridges. They were not competitors of ours.

Q. Do you know the Nelson & Buchanan Company of Chambersburg, Pennsylvania?

A. I do not know anything about them.

Q. State which of the companies that went into the American Bridge Company made and sold plain mill material in interstate commerce.

A. Well, the Pencoyd—

Q. Were you asked to look up that information?

A. I was.

Q. Have you looked it up?

A. I have.

Q. Are you prepared to answer it?

A. To the best of my ability.

Q. I see you have a memorandum there?

A. Yes, sir.

Q. Can you refresh your memory and speak from memory after looking at that?

A. Yes.

Q. Then please answer the question, will you?

MR. LINDABURY: Let me ask a question about that.

By MR. LINDABURY:

Q. Is that a memorandum made at the time of the transactions you are about to testify to, or was it made recently?

A. Recently made. I mean I have looked up the data.

Q. For the purpose of testifying here?

A. Yes, sir.

Q. At whose suggestion did you make that memorandum?

A. I was asked by counsel to look up these facts.

Q. When?

A. Yesterday, and a month ago.

Q. You have done it?

A. I have done it.

Q. And you have made a memorandum?

A. Yes, sir.

Q. Do you want to refresh your recollection by that?

A. Yes, sir.

MR. LINDABURY: That is not within the rules. We object to that.

By MR. DICKINSON:

Q. You need not look at your memorandum.

A. Thank you.

Q. I will ask you whether or not the Pencoyd Iron Works owned by the A. & P. Roberts Company made plain mill material.

MR. LINDABURY: I object to that as leading.

MR. DICKINSON: "Whether or not." I did not say whether they did or not.

MR. LINDABURY: I object to that as leading, and there seems to be no excuse for that in the case such as this witness describes.

MR. DICKINSON: I will withdraw that question.

By MR. DICKINSON:

Q. Do you know what class of products the Pencoyd Iron Works made?

MR. LINDABURY: That is better.

A. I do.

By MR. DICKINSON:

Q. What did they make?

A. The Pencoyd Iron Works made billets and structural material and mill products, besides their bridge and building department.

Q. What is plain mill material? What does that mean?

A. It means building plates and angles and bars and channels and beams.

Q. What is that work used for?

A. That is used in the fabricating jobs, to build buildings and bridges and so forth.

Q. To build bridges?

A. Yes.

Q. And buildings?

A. Yes.

MR. LINDABURY: Will you not stop a minute? I am interested in understanding that as well as you. The understanding I have had is structural shapes—is that another name for it?

THE WITNESS: Some plain material would be outside of structural shapes, like small plates, you know.

MR. LINDABURY: I am trying to get the information. I did not understand it fully myself.

MR. DICKINSON: I will pursue the inquiry.

By MR. DICKINSON :

Q. State fully what you understand by plain mill material?

A. I understand plain mill material is material that comes from a rolling mill before it has been fabricated in any way by a shop. That may be plates, angles, beams and channels, or any other mill product.

Q. Was or was not plain mill material used by those concerns that constructed bridges and constructed buildings wherein steel structure is used?

A. Yes, it was.

Q. The Keystone Bridge Works; do you know what they made? They were formerly of the Carnegie Company.

A. As part of the Carnegie Steel Company, they made, in addition to bridges and buildings, all kinds of plain material. Their mills rolled all kinds of plain material used by bridge works.

Q. The kind of material you have been describing?

A. Yes.

Q. Bridge and structural work as well as work for houses?

A. Yes.

Q. The Cleveland Rolling Mill? Where was that situated?

A. I am not familiar with that. I imagine it is in Cleveland, but I am not familiar with it.

Q. Nor with their products?

A. No.

Q. What concerns were there, if any, making the same classes of plain mill material that you have described, that were not taken into the American Bridge Company on its formation? You need not look at your memorandum.

A. At that time there was the Jones and Laughlin; the Phoenix Iron Company; I think the Pennsylvania Steel Company made a small quantity; the Cambria, possibly; and the Pottsville Iron Company.

Q. What proportion of all the plain mill work made at the time of the formation of the American Bridge Company was made by concerns that went into that company?

A. I should say certainly from 60 to 75 per cent.

Q. What per cent did the American Bridge Company control at a time just after its formation, of the class of work which the Phoenix Company sold?

A. I should think very close to 75 per cent.

Q. Did the companies which went into the American Bridge Company competing with each other, make that class of work or not?

A. They did, before the combination, yes.

Q. What class of work did those companies that went into the American Bridge Company make?

A. I think their largest tonnage was heavy railroad work and buildings.

Q. Bridge work? Did they make bridge work?

A. I mean heavy railroad bridge work.

MR. LINDABURY: Heavy railroad bridge work and what else?

THE WITNESS: Building and structural work.

By MR. DICKINSON:

Q. Is that the kind of work generally that those two companies you represent did?

A. Yes.

Q. Take works such as railroad bridges, large bridges over rivers, large highway bridges and heavy buildings. What proportion of that work is now controlled by the American Bridge Company?

A. Now?

Q. Yes, at this time.

A. I think at least 50 per cent.

Q. Are you acquainted with statistics that are given out from time to time of the products or the amount of products of that character of work throughout the United States?

A. Yes. It is my business to keep posted in such matters.

Q. State what kinds of works or shops are included in that class of statistics. For instance, state whether or not it merely covers those that are interstate commerce, or whether it goes further than that, and, if so, to what extent?

A. In arriving at the total tonnage of fabricated work in

the United States, not only the product of the larger companies considered, about which you have been asking questions, but also the very numerous small shops that would not be considered as entering into interstate commerce, I should say, but are local in their business relations.

Q. Shops and concerns that are entirely local in their character?

A. Yes; but that have a very large tonnage in the aggregate.

Q. It goes in to swell the general figure?

A. It is a very important factor in the general figure.

Q. To that extent, has that any relation to the amount done in interstate commerce?

A. I should say it does not affect it seriously.

Q. What class of work and what class of shops are included in what you have said?

A. Every kind of a shop. A shop that punches one hole in a beam would be considered a fabricating shop, in that sense.

Q. And a smith shop?

A. A smith shop and any shop with a small tool.

Q. What proportion of large bridge and structural contract work of the United States for the twelve months next preceding this time has the American Bridge Company contracted for, and what proportion have the so-called independents contracted for?

MR. LINDABURY: If this witness throws overboard all the statistics upon what is he going to base his information?

MR. DICKINSON: You can find that out when you take the witness for examination.

MR. LINDABURY: I would be entitled to ask him now as to the sources of his information.

MR. DICKINSON: I think not. I think when I turn the witness over to you that is as soon as you can properly begin examining him.

MR. LINDABURY: All right, if you want to go on that way.

MR. DICKINSON: What do you want to do? I will concede most anything to keep peace.

MR. LINDABURY: I want information based on something reliable and not on guess work. If he is in some bridge build-

ers' association and gets his information that way, then I would not object.

By MR. DICKINSON:

Q. Are you a member of any bridge builders' association?

A. I belong to the society called the Bridge Builders' Society.

MR. LINDABURY: I withdraw my objection, then.

By MR. DICKINSON:

Q. Will you answer the question?

A. What is the question?

(The question was repeated by the stenographer, as follows:)

“Q. What proportion of large bridge and structural contract work of the United States for the twelve months next preceding this time has the American Bridge Company contracted for, and what proportion have the so-called independents contracted for?”

MR. LINDABURY: Since May 16, 1911.

A. To the best of my belief and knowledge—

MR. LINDABURY: I object to his belief.

THE WITNESS: You do?

MR. LINDABURY: If you have figures, I do not care; but I do not want mere belief.

THE WITNESS: The American Bridge Company—

MR. LINDABURY: Is this a matter of belief?

MR. DICKINSON: I will show the foundation of his belief. Just answer the question, please.

THE WITNESS: The American Bridge Company has taken practically its capacity in the last twelve months, while the principal competitors outside have taken from 40 to 65 per cent.

By MR. DICKINSON:

Q. Of their capacity?

A. The American Bridge Company has probably ten months' work ahead of them, so far as their capacity is concerned. Their principal competitors have about three months'.

Q. What is the position now of the American Bridge Company, as to its ability, through its connection with other subsidiaries of the United States Steel Corporation, to reach the result that you have described, and what are its advantages or disadvantages, if any, over its independent competitors?

A. Is it simply my views that you want?

MR. LINDABURY: No; your speculation.

By MR. DICKINSON:

Q. Based upon the knowledge you have acquired from the competition of the American Bridge Company, meeting them in competition, and your knowledge of the business and of its workings.

MR. LINDABURY: I object to that as calling for opinion and speculation and as irrelevant, incompetent and immaterial.

A. From my knowledge of the cost of fabrication, and from my knowledge of the cost of erection, I feel certain, in connection with the competition we have been connected with, that the American Bridge Company has some advantage by reason of its connection with the Steel Corporation.

By MR. DICKINSON:

Q. In a dull season in the bridge work in the United States, what is its power as contrasted with that of the independents, to control and take the business?

MR. LINDABURY: I object to that as irrelevant and incompetent and calling for a judgment on the case.

MR. DICKINSON: I think I will make it relevant before I get through. Answer the question.

MR. LINDABURY: What is this question asked for?

MR. DICKINSON: If you want me to explain what I am going to try to prove, of course I am perfectly willing to do it; but I do not think it is proper for me to make an announcement of that sort.

MR. LINDABURY: I object to this question and give notice that at the next session of the United States Court at Philadelphia I will appear and move to strike it out.

MR. DICKINSON: Very well.

MR. LINDABURY: If we are to have questions of this kind we had better have their propriety passed upon.

MR. DICKINSON: I do not object to your motion, and maybe by that time there will be some other things of that kind.

MR. LINDABURY: Please accept the notice.

MR. DICKINSON: I will.

(The stenographer repeated the pending question as follows:)

“Q. In a dull season in the bridge work in the United States, what is its power as contrasted with that of the independents, to control and take the business?”

A. I think its power is simply limited by its capacity to take business:

By MR. DICKINSON:

Q. From whom do you buy the material which you work up into shape and use in your contracts?

A. The Phoenix Iron Company furnish about 60 per cent of our mill material, and the balance is bought outside, at other mills.

Q. Has your company ore properties?

A. I think to a limited extent they have, although I am not posted about that.

Q. Has it any railroad transportation that it controls?

A. No.

Q. From what sources, if you know, does the American Bridge Company buy the material that it uses in the contracts that it bids upon in competition with you and other independents?

A. I can only assume that it buys it from the Carnegie Steel Company and the Pencoyd Iron Works.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

2 o'clock p. m.

At the expiration of the recess the hearing was resumed.

JOHN STERLING DEAN,

the witness under examination when the recess was taken, resumed the stand for further examination.

MR. DICKINSON: You may take the witness.

CROSS-EXAMINATION,

By MR. LINDABURY:

Q. Mr. Dean, how long have you been with the Phoenix Company?

A. About 33 years.

Q. And what is your personal share in the work?

A. Nothing. I have no personal——Do you mean——

Q. In the Phoenix Company.

A. Do you mean any financial interest in the company?

Q. I mean are you a practical iron man?

A. I think so; I call myself a practical iron man.

Q. A list was read to you this morning of the concerns that went into the American Bridge Company. You remember that, of course?

A. I do.

Q. How many in number, about?

A. About 25 or 30, I should say.

Q. Do you know how many concerns were left out of it engaged in the bridge-building industry?

A. No.

Q. Oh, approximately. Just the number.

A. You mean as far as our competition was concerned, or any bridge company?

Q. This American Bridge Company was organized to engage in bridge-building generally, was it not?

A. I understand so, yes.

Q. Now I am asking about bridge-building generally. How many concerns were there left outside of it engaged in the bridge-building industry in the United States, either highway or railroad?

A. I should say about half a dozen important ones. There may have been a number of very much smaller ones, but just how many I do not know.

Q. You and I and the rest of us may not agree about what is important and what is not. Do you call yours an important one?

A. Yes.

Q. We do not want to get into any question over that. Let us have the number without any regard to your definition of the idea of importance.

A. I could not give you any notion of how many were out.

Q. I have here a supplement to the Iron & Steel Works Directory, 1903. I suppose you are acquainted with that work, are you not?

A. Not particularly with that number. But I am acquainted with the work.

Q. It is a reputable work, is it not?

A. Yes, sir.

Q. Relied on in the trade for its statistical information?

A. It is.

Q. When was the company formed??

A. As I remember, in 1900.

MR. DICKINSON: The book you are using is 1903, is it?

MR. LINDABURY: Yes.

By MR. LINDABURY:

Q. Now that gives the number with the name and the tonnage in each of the states, apparently existing at the end, I suppose, of 1902. It gives two of them in Maine, Fletcher & Crowell Company and Megquier & Jones Company. Do you remember them?

A. Never heard of them.

Q. It gives six in Massachusetts—Boston Bridge Works.

A. Yes, that is the one I had in mind.

Q. Do you remember that?

A. Yes.

Q. It was rather an important concern, was it not?

A. Yes, sir.

Q. The Eastern Bridge & Structural Company of Worcester?

A. Never heard of them.

Q. New England Structural Company of Boston?

A. That is a small concern, yes.

Q. It is given as having a larger annual capacity than Boston.

A. I did not suppose it had.

Q. 17,000 tons as against Boston's 15,000 tons. Norton Bridge Works, Springfield?

A. Never heard of them.

Q. Springfield Construction Company?

A. Never heard of them.

Q. I suppose it is a fact, is it not, that the territory in which any bridge company was able to operate in competition was more or less restricted, was it not?

A. I think it would depend upon the company itself.

Q. But there is not anything more expensive to transport than structural materials, whether they are for bridge or building, is there?

A. That is right.

Q. The expense of transportation from one locality to another is greater on structural shapes and bridge material than any other product of iron, is it not?

A. I should imagine it is, yes. I do not know.

Q. So that the area of competition in which any company or any plant, I will call it, can economically compete, is narrower in any other line of steel industry, is it not?

A. The quality of competition is governed by the freight, of course.

Q. For instance, the Boston companies could not compete with you for work in your locality on equal terms at all, could they?

A. Not on equal terms, no.

Q. You could not compete in the Boston district with the Boston companies on equal terms?

A. Not on equal terms.

Q. And was not the difference in the freight rate so much as to consume all the profits there would be in either case?

A. No.

Q. The profits are pretty large, then, in bridge construction.

A. We compete with Boston to-day.

Q. You do?

A. Right in their territory.

Q. But did you in 1903?

A. Yes.

Q. In bridge construction?

A. Yes.

Q. This publication gives the following concerns—I will give the number without reading the name:

Connecticut, two. I will give the names there: The Berlin Construction Company and the Berlin plant of East Berlin. You are familiar with those two?

A. Yes.

Q. One of them went into the American Company?

A. Yes.

Q. The other did not, did it?

A. That is right.

Q. None of those in Maine or Massachusetts went into the American Bridge Company, did they?

A. So far as I know, no.

Q. Twelve are given as completed and one as projected in the State of New York, the first of which is the Buffalo Structural Steel Company. Do you remember that?

A. No.

Q. Milliken Brothers. You know them do you not?

A. Yes.

MR. DICKINSON: Are you confining your inquiries now as to what existed in 1903?

MR. LINDABURY: Not confining it.

MR. DICKINSON: That is what I want to know, the scope of your inquiry. You are using a book there of 1903.

MR. LINDABURY: Giving the conditions in 1902. Now, I am going to do the best I can with this witness for 1900 and 1901, so far as he recalls.

By MR. LINDABURY:

Q. Milliken Brothers is an old concern, is it not?

A. Not very old, no.

Q. It was in existence in 1900, was it not?

A. I believe so.

Q. Doing a large business then, was it not?

A. Quite a large business.

Q. That did not go into the American Bridge Company?

A. No.

Q. Do you know the Owego Bridge Company, of Owego?

A. I have just heard of them, yes.

Q. You do not know much about them?

A. No.

Q. Of these twelve concerns in New York——

MR. DICKINSON: Have you read the twelve?

MR. LINDABURY: No. Of all the concerns in New York, twelve are mentioned, Judge, but there are a good many pages, and it would take all the afternoon if I read the book.

MR. DICKINSON: You have not called the witness's attention to the names of them. You are asking for something you have not called to his attention.

MR. LINDABURY: I will try to be fair and let you have this book.

MR. DICKINSON: I do not question your fairness, but I call attention to the fact that you are asking him about something to which you have not called his attention.

MR. LINDABURY: Just listen to my question, Judge, and see whether you are right.

By MR. LINDABURY:

Q. Twelve concerns are given as completed and one as projected, in New York. Did any New York concern except the Empire Bridge Company, which you have already mentioned, go into the American Bridge Company, so far as you know?

A. Not that I remember; not that I recall.

Q. In New Jersey there are five mentioned as completed, and one projected. The first is the Jackson Agricultural Iron Works. I think you have heard of that.

A. Is that in Jersey City? I thought it was in New York.

Q. It is down under the head of New Jersey..

A. Well, I have heard of them, anyway.

Q. Works at Aldine; its office in New York?

A. Yes; I have heard of them.

Q. It was quite an important concern in business?

A. Quite a concern.

Q. The Passaic Steel Company; you have heard of them?

A. Yes.

Q. Actual annual capacity 60,000 tons, but will be increased in 1903 to 100,000?

A. Yes, sir.

Q. Do you know whether it was increased or not?

A. No, I do not.

Q. You do not?

A. No.

Q. Do you think 60,000 was probably right?

A. I think it was over-stated.

Q. Did it roll its structural shapes?

A. Yes.

Q. It also made steel ingots and castings?

A. I understand so.

Q. The Raritan Structural Steel Company.

A. I never heard of them.

Q. With 20,000 tons capacity.

A. I never heard of that.

Q. With works in New Brunswick and offices in the Potter Building, New York.

A. I never heard of them.

Q. You say you never heard of them?

A. No.

Q. John A. Roebling's Sons Company. Did you ever hear of them?

A. At Trenton; oh, yes.

Q. They rolled rods and drew their wire, did they not?

A. They did.

Q. And they built suspension bridges?

A. Yes.

Q. It was some little concern, wasn't it?

A. A big concern.

Q. A big concern?

A. One of the biggest works.

Q. None of those went into the American Bridge Company?

A. No, I think not; not that I know of.

Q. The Trenton Plant, Trenton, New Jersey. That is the last one named here. That went into the American Bridge Company?

A. Yes.

Q. It was the only New Jersey plant, so far as you know?

A. That is the only one I can recall at the present time.

Q. Of the Pennsylvania plants the number given is 28 completed, and one building. What did you say the capacity of your plant was, the Phoenix Bridge Works?

A. At that time?

Q. Yes.

MR. DICKINSON: What time do you mean, 1903?

MR. LINDABURY: 1902.

A. I think about 50,000 tons.

By MR. LINDABURY:

Q. That is what is given in this directory?

A. Yes.

Q. Now, let us see about the others. One is down as the Brown-Ketcham Iron Works of Greensburg.

A. Yes.

Q. That was a considerable concern?

A. Yes, in certain lines.

Q. What lines.

A. More particularly buildings; no bridge work, as I understand.

Q. Where were their works?

A. I am not familiar with their works. I have just heard of the firm.

Q. Take the Fort Pitt Bridge Works at Pittsburg. Was that a large concern?

A. It has grown into quite a concern. At that time I imagine it was rather small.

Q. It is given here as having then a capacity of 30,000 tons. Is that about right?

A. I did not suppose they were as large as that at that time, but it may have been so. That was a new concern.

Q. Was it in business in 1900?

A. I am not certain about that.

Q. It started up about that time, do you think?

A. About that time.

Q. And it is still in existence?

A. Yes.

Q. Were these others that I have mentioned, in business in 1900, so far as you recollect?

A. Yes.

Q. I will ask you if any of these that I have named were not in business in 1900, to state that, as it occurs to you, as we go along, without my calling your attention to that in every case.

Q. What about the McClintick-Marshall Construction Company, of Pittsburg?

A. As I recollect they were formed after the American Bridge Company was formed.

Q. How soon afterwards?

A. Almost immediately afterwards.

Q. It was an independent concern, was it not?

A. It is now.

Q. And it was from its formation?

A. Both McClintick and Marshall were connected with the Shiffler Bridge Company that the American Bridge Company took over.

Q. Do you know the Penn Bridge Works?

A. Yes.

Q. At Beaver Falls?

A. Yes.

Q. Was that in business in 1900?

A. Yes.

Q. The Pennsylvania Steel Company I think you have mentioned. Now the Eastern Iron & Steel Company, with works at Pottsville. You know them, I suppose?

A. Yes.

Q. It is stated here that they rolled rolls, beams, channels, angles, and so forth. Is that right?

A. Yes. But you are talking about structural work now, and I imagine they were not in structural work at that time.

Q. It is stated here that they made railroad and highway bridges and iron and steel buildings?

A. I thought it was afterwards, but possibly it was in 1900.

Q. The Riter-Conley Manufacturing Company, of Pittsburg. Is that a large concern? It is given here as having an annual capacity of 100,000 tons.

A. Yes. Their principal business was blast furnace work, —boiler and blast furnace work.

Q. The statement is that they made railroad and highway bridges.

MR. DICKINSON: I object to this statement being put in the record this way unless you are going to put the book in evidence. You are making statements from books, and this is objected to.

MR. LINDABURY: It is cross examination.

MR. DICKINSON: Cross examination is one thing, but quoting from a book is another thing, and I object to the form of the cross examination. I am perfectly willing for you to put the book in, subject to my exception.

MR. LINDABURY: I think I have a right to state what is in the book and ask whether it accords with the witness's recollection.

MR. DICKINSON: I except to that as improper cross examination.

MR. LINDABURY: That is what you have done on direct, and I think I have a right at least to do it on cross examination.

MR. DICKINSON: What book did I use?

MR. LINDABURY: The Iron Age and some other book.

By MR. LINDABURY:

Q. This statement also says that company does building and structural work of all kinds.

A. That was its principal business.

MR. DICKINSON: I beg your pardon. I do not think I used the Iron Age, to be correct about it.

MR. LINDABURY: That is my recollection.

MR. DICKINSON: I think you are wrong about that.

By MR. LINDABURY:

Q. What did you say its principal business was?

A. My best knowledge is that its principal business at that time was the construction of blast furnace works. It might have done some structural and bridge work also.

Q. You are not so sure about that?

A. No.

Q. How is it that you are only able to recollect six concerns which did not go into the American Bridge Company, when there are twenty-eight in this State?

A. The six concerns which I mentioned are the ones which I considered were important and with which the competition between the Phoenix Bridge Company and these concerns occurred.

Q. Those which you consider important and which competed directly with the Phoenix are the ones you mentioned?

A. Well, those are the ones I had the best knowledge of, of course.

Q. You did not mean to intimate that that was an all-inclusive list?

A. Not at all.

Q. I see by this statement that twenty-three are put down as in Ohio and only one of them went into the Bridge Company.

A. I have no knowledge of that.

Q. And that of the twenty-eight in Pennsylvania only one went into the Bridge Company.

MR. DICKINSON: Have you any knowledge?

A. Only one.

By MR. LINDABURY:

Q. Only one of the twenty-eight in Pennsylvania went into the Bridge Company?

A. The Pencoyd and the Shiffler and the Keystone, and a whole lot of those others went in.

MR. DICKINSON: I object.

MR. LINDABURY: Didn't they go into an earlier company?

MR. DICKINSON: Your answer admits that more than that in Pennsylvania went in.

MR. LINDABURY: In an earlier company.

MR. DICKINSON: No; your answer admits that more than one from Pennsylvania went into the Bridge Company, and I object to the statement because it is not in accordance with the fact as admitted. Your answer admits that the Roberts Company, of Pennsylvania, went into the Bridge Company.

MR. LINDABURY: Are you saying this for my benefit, because I want to acknowledge my error, if you are?

MR. DICKINSON: Then, if you acknowledge your error, I do not think a man can do anything better than that.

MR. LINDABURY: No, you never did better than that yourself. This list gives the American Bridge Company as one, and seven under, so I was in error. That is, of the twenty-eight, the American Bridge Company is given as one, and there are twenty-seven others, and it is shown that under the head of the American Bridge Company there are seven that went into it.

MR. DICKINSON: From Pennsylvania?

MR. LINDABURY: In Pennsylvania. That is my error.

MR. DICKINSON: No; that is your correction.

MR. LINDABURY: There are twenty-seven outside and one building. Then I ought to say, Judge, for the same reason, that the Ohio list, while it shows only twenty-three, there is only one going into the American Bridge Company, and that one is the American Bridge Company, and it is stated that it had four companies or plants.

MR. DICKINSON: I do not understand that. Please state that again, will you not?

MR. LINDABURY: There are twenty-three given.

MR. DICKINSON: From Ohio?

MR. LINDABURY: Yes. One of which is the American Bridge Company, but under that head it is stated that four

plants in the State of Ohio went into the American Bridge Company. It makes twenty-two outsiders and one projected.

By MR. LINDABURY:

Q. In Indiana there are fifteen plants given. Do you know whether or not any Indiana plant went into the Bridge Company?

A. I cannot recall any.

Q. This statement is, I believe, that the LaFayette plant did. Do you remember the LaFayette plant? Do you remember the name?

A. Yes, sir.

Q. And that leaves fourteen out of fifteen Indiana plants that did not go in. Do you remember about any of the Indiana plants?

A. No.

Q. You do not know very much about them?

A. No.

Q. Take the Elkhart Company; did you know that?

A. I believe I knew there was such a company.

Q. The Brown-Ketcham Iron Works, with a capacity of 45,000 tons?

A. They are the ones you mentioned about being in Pennsylvania.

Q. There is a plant in each place. This is the Indiana plant.

A. The Indianapolis plant.

Q. The Indiana Bridge Company; do you know that?

A. Yes, sir; by name; that is all.

Q. You know it by name?

A. I know there was such a company.

Q. It did not come into competition with you?

A. No. They were a very small concern, and built highway bridges.

Q. Are you sure?

A. I do not know the tonnage, but I would call them a small concern.

Q. You do not consider everything as a small concern that did not compete with you, do you?

A. Not at all. I have no such notion as that.

Q. I believe you do not know much about them, since you did not meet them in business?

A. No.

Q. But the difference in locality might account for that very largely, might it not?

A. Do you mean that I would not know of them because they were in Indianapolis?

Q. Because they would not compete?

A. No; we competed in California for bridge work.

Q. Who did?

A. We did.

Q. Yes; but I am speaking about this company.

A. I meant the location would not alter the fact that I would know about them.

Q. Very well. In Illinois there are fourteen plants given here, or fourteen companies, I should say, one of which is mentioned as the American Bridge Company with two plants; so that made thirteen companies outside of the two taken by the American Bridge Company in that state. Did you happen to know that?

A. Including the Lassig Bridge & Iron Works?

Q. Yes.

A. That is three, then; the two bridge company plants and the Lassig Company.

Q. No. This states the two plants in Illinois, the American plant and the Lassig plant. They were both located in Chicago?

A. Yes; those two were.

Q. They made up the American Bridge Company plants?

A. I thought you said there were two American plants?

Q. I did. I meant those two,—the American and the Lassig plants. Together they make the Illinois plants of the American Bridge Company. And that left thirteen companies outside?

A. Yes.

Q. Do you remember the Illinois Companies, the Chicago Bridge & Iron Company?

A. Yes.

Q. That is an important concern, is it not?

A. Yes.

Q. Do you remember the Kenwood Bridge Company?

A. Yes.

Q. It was a considerable concern, was it not?

A. Yes.

Q. Those plants were all in business in 1900, were they not?

A. As far as I remember.

Q. In Wisconsin we have four; in Minnesota three; in Iowa four—

MR. DICKINSON: Just a moment, Mr. Lindabury. I want to ask the stenographer to read the last two or three questions.

(The stenographer repeated the questions and answers referred to.)

MR. DICKINSON: Do you mean by "those concerns" the ones that you have named?

MR. LINDABURY: Yes. I mean those that I have been naming.

MR. COLTON: And not the eleven or twelve that you did not name? In every state you say that there are—

MR. LINDABURY: Those that I have named, yes.

MR. DICKINSON: Just those that you have named?

MR. LINDABURY: Yes.

MR. DICKINSON: All right.

MR. LINDABURY: Of course, he cannot answer as to the others that I have not named.

MR. DICKINSON: I understand. I simply wanted to know what you understood your question to cover. That is all. I wanted to know whether it covered those that you did not name, or not.

MR. LINDABURY: No; I did not mean that.

By MR. LINDABURY:

Q. Do you know about the Springfield Bridge & Iron Company of Springfield, Illinois?

A. No.

Q. There are three in Minnesota, four in Iowa, three in Missouri and three in Kansas. With regard to the Minnesota

plants, do you know whether any Minnesota plant went into the American Bridge Company?

A. I think there was one of them that did, yes.

Q. The Minneapolis?

A. The Minneapolis.

Q. There are two others; the Minneapolis Steel Company and the St. Paul Foundry Company. Do you know what their size was as compared to the Minneapolis plant that went into the American Bridge Company?

A. No; I never heard of the St. Paul.

Q. The St. Paul is given as 7,000 tons and the Minneapolis 12,000 tons. Both were larger than the one that went in, were they not?

A. I do not know.

Q. Did you not know the St. Paul Foundry Company?

A. I never heard of it, no.

Q. In Iowa there are four given, no one of which went into the American Bridge Company. There is the Clinton Bridge & Iron Works, the Des Moines Bridge & Iron Works, the Fair Williams Bridge & Manufacturing Company, and the Marshalltown Bridge, Boiler and Machine Shop. Do you know those?

A. I have heard of two; I have heard of the first two you have mentioned.

Q. You know that neither of them went into the American Bridge Company?

A. I do not think they did.

Q. Missouri, there are three; the Banner Iron Works, the Koken Iron Works, and the Stupp Brothers Bridge & Iron Company. Do you know whether any of those went in?

A. No.

Q. Do you mean you do not know?

A. Yes.

Q. Kansas. Missouri Valley Bridge & Iron Works. Do you know that?

A. Yes.

Q. That is quite a concern?

A. Yes.

Q. And was in business in 1900?

A. I think so.

Q. The Topeka Bridge & Iron Works; do you know that?

A. No.

Q. The Wichita Works?

A. No.

Q. I will take the finish of these. There is one in Oklahoma. Do you know that?

A. No.

Q. That must be rather recent?

A. Yes, very recent.

Q. North Dakota, Washington, Oregon and California; and the end is United States. Total number of iron and steel bridge building works in the United States in January, 1903, which are described in this list, 140 completed, one building, and five projected. Does that accord generally with your recollection?

A. I should say so.

Q. You would say that was about right?

A. Yes.

Q. And had there been any considerable number of those constructed in the two preceding years? I assume there had been some.

A. I imagine not very many.

Q. No abnormal growth in that time?

A. Not so far as I know.

Q. I will ask you the same question in regard to the third preceding year. Had there been anything more than an ordinary normal growth in that time, in the three years preceding the 1st of January, 1903?

A. Not that I remember.

Q. Since that time have further new concerns come into the field?

A. Yes.

Q. The number of the plants has very considerably increased, since 1903?

A. I should say there have been some new plants, but I do not know that I would say the number has considerably increased.

Q. The number being 140 then, is it not 400 now?

A. I do not think there has been any such increase as that.

Q. Have you no statistics on the subject?

A. No.

Q. There are statistics published, are there not, on this subject?

A. That list that you have been reading from, that indicates the plants.

Q. What statistical information is available in regard to the number of bridge building companies in the United States? You say there is this that I have been reading from.

A. That is the one. I think that is about the best.

Q. Have you that publication for the present year?

A. Yes.

Q. Have you it with you?

A. No.

Q. Can you tell me any of the principal ones that have gone into business since 1903?

A. No; I cannot think of any of great importance.

Q. You were somewhat surprised to learn that the present number in the business is 400, were you?

A. No, not at all surprised.

Q. And you have not, yourself, in your memory, exact information on the subject, have you?

A. No. I understood there were about 400 plants in the United States fabricating structural work.

Q. I understand the number to be 373 plants outside the American Bridge Company. That, you think, is about right?

A. I should say so, of all kinds and descriptions.

Q. Has the business of bridge building and structural work developed rapidly since 1900?

A. Yes. The tonnage has considerably increased.

Q. Your own business, I take it, has grown during that period?

A. Yes.

Q. I mean your tonnage. Has it doubled during that period?

A. No.

Q. But it has grown largely, and the business of the country has developed a great deal in that period, has it not?

A. Yes.

Q. Take structural iron work. Has that not doubled in the period of ten years?

A. I should say that alone had, yes. The building work, you mean?

Q. Yes.

A. Yes.

Q. I suppose you are not building quite as many bridges as you were ten years ago, but you are putting up quite as many steel buildings, are you not?

A. I think probably so.

Q. That is an important branch of your business, is it not?

A. Yes.

Q. Do you know what statistics show about the relative proportion of the output of the American Bridge Company at the time of its formation?

A. I understood the proportion was about 60 per cent.

Q. Did you get that from gossip or from statistics?

A. I think I got it from a general knowledge of the business that one expects to get, and from statistics. I thought that was about right.

Q. Do you know what it is now?

A. I testified that I thought it was about, if I remember rightly—

Q. Never mind what you testified before. Give your present recollection.

A. About one third of the total plants that you are mentioning now.

Q. That is, about 33 per cent of the business?

A. Of all these plants that you are mentioning.

Q. Are you speaking of capacity or output?

A. I am speaking of both.

Q. That is, its capacity and output is about 33 per cent. of the whole?

A. Of the whole 400, you speak of there?

Q. That is of all those who are in the same line of business or any of the branches of it carried on by the Steel Corporation?

A. All that have any works that could be called structural work in any sense.

Q. Including bridges?

A. Including bridges.

Q. I suppose some of those concerns do business in lines that you do not?

A. Oh, yes, a great many of them.

Q. And the steel corporation carries on lines of business that I presume you do not?

A. Certainly.

Q. Those that are common are few only, but important ones?

A. They are very important ones, I should say, but there are only two big branches of their business.

Q. Now you gave some information this morning with regard to the contracts taken during the last year by the American Bridge Company, and I think you did not give the tonnage, did you?

A. No, sir.

Q. What you did say, as I recall it, was that they took contracts enough to run their mills full?

A. Not their mills full, no.

Q. Their shops full. Contracts up to the limit of their capacity?

A. I think so; yes, sir.

Q. That is the way I understood you. Now, whether you call it mills or shops, or what, their full capacity?

A. I do not mean the mills; I have no knowledge of the mills.

Q. What did you mean to say about that? Let me have it again to be sure that I understand it.

A. Well, from my general knowledge of the business I should say that the American Bridge Company have been taking practically their entire capacity in the last year.

Q. By capacity you mean what? How do you rate their capacity?

A. I mean the capacity of their shops.

Q. That is their fabricating shops?

A. Yes.

Q. Now, I understand you. I did not before. And I think you said the other fabricators had not taken over about 40 per cent., perhaps, of their capacity?

A. No; I did not say that.

Q. Well, get me straight.

A. I said from forty to about 65. I should say some forty and some sixty-five. It would average, I should say, about 55 to 60 per cent.

Q. Very well; then if I recollect you right, the American Bridge Company, you thought, had taken 100 per cent. of its capacity and the others about 55 to 60 per cent?

A. Approaching that.

Q. Of contracts?

A. Yes.

MR. DICKINSON: As I understood him he meant those who competed with the American Bridge Company for that class of work.

MR. LINDABURY: Well, I assume he was speaking of competitors.

THE WITNESS: Yes.

By MR. LINDABURY:

Q. And I assume you meant they got this through competitive bidding, did you?

A. Largely so, I should imagine.

Q. Did you not mean entirely so?

A. Well, I didn't make any statement of that kind.

Q. Then it was not your intention——

A. I had no knowledge where they got all their business.

Q. Then it was not your intention to have us understand that they got this larger proportion of business by under-bidding their competitors?

A. Oh, yes, the larger part of it, yes.

Q. How did you say you got this information?

A. Just my general knowledge of the bridge and structural business, knowing their deliveries and reading the trade papers, the tonnage that they took, and knowing the tonnages that the independents took, knowing the tonnage that we took, and I formed the general opinion that I have just given you.

Q. How did you learn the tonnage that the independents took?

A. The principal ones we learned directly through this bridge society that you spoke of.

Q. What is that called?

A. The Bridge Builders' Society.

Q. What is its location?

A. Its office is on Church Street, in New York, in the Hudson Terminal Building.

Q. When was that born?

A. One year ago.

Q. And who went into that?

A. About twenty-five companies.

Q. Engaged in structural iron work?

A. Structural and bridge work.

Q. Who are the principal ones?

A. The McClintic Marshall, the Pennsylvania Steel, the Fort Pitt, Toledo, Minneapolis Steel & Machinery, Lackawanna—there are twenty-five of the principal competitors outside of the American Bridge Company.

Q. The American Bridge Company did not go into it?

A. No, sir.

Q. So the independents that you refer to consist of the members of this association, do they not?

A. Yes; the principal ones.

Q. And the American Bridge Company is the outside or independent concern in this case?

A. Yes.

Q. Very well. Now, there is only one independent and 25 in this association. Is that right?

A. Yes, sir.

Q. And how often does the Association meet?

A. Every month.

Q. What day of the month?

A. The second Tuesday of the month.

Q. Are their meetings public?

A. You are invited.

Q. Are their meetings public?

A. Public. The doors are open.

Q. When do you hold the next meeting?

A. In Cleveland I think it is, on the second Tuesday in June.

Q. In Cleveland?

A. Yes, sir.

Q. You meet around?

A. Yes.

Q. Do not meet in Church Street?

A. New York occasionally, Pittsburgh, Chicago, Boston, Cleveland.

Q. Do you have a luncheon or dinner?

A. We certainly eat in the middle of the day.

Q. What do you call the repast?

A. We call it a luncheon.

Q. I see. Besides meeting and besides lunching——

A. It is not a dinner.

Q. I see. It is a mild repast?

A. Yes, very much. We do not discuss business at the repast.

Q. No; I take it not; do you do it before?

A. Yes; and after.

Q. And after, too?

A. Yes; before and after.

Q. Is not that dangerous?

A. For two days.

Q. Oh, you stay there for two days?

A. Yes.

Q. The whole twenty-five of you?

A. Yes, sir.

Q. You must do a lot of business in that time.

A. We try to.

Q. And you are all competitors.

A. Yes, sir.

Q. I see. Does that competition go on through the two days?

A. Yes, sir.

Q. And right on the floor?

A. Absolutely the same competition we had before, right on the floor.

Q. Do you exchange information?

A. Yes, sir.

Q. Do you report your orders?

A. Yes.

Q. And your prices?

A. Yes.

Q. And your tonnage?

A. Yes.

Q. Do you have a commissioner?

A. No.

Q. Do you have a secretary?

A. Yes.

Q. Do you sometimes in the course of your business put in sealed bids?

A. No; not now.

Q. When did you give that up?

A. Two months ago.

Q. How many?

A. About two months ago.

Q. Two months only? Well, why did you give up putting in sealed bids?

A. Because it was poor business.

Q. It was?

A. Yes.

Q. When you put in your sealed bids you immediately sent information about it to the secretary, did you?

A. The secretary always had the information, yes.

Q. That is, each man who put in a sealed bid immediately would give information of it to the secretary?

A. The secretary had all the information.

Q. You do not mean the secretary made up the bids for you, do you?

A. Oh, no.

Q. He did not get the information before you made the bid?

A. No.

Q. How did he get it?

A. As soon as we made the bid we sent the bid to the secretary.

Q. A copy of it?

A. A copy of it; a copy of the bid.

Q. And he was the secretary for all?

A. Yes.

Q. And these were competitive bids?

A. Yes.

Q. I see. What did he do with them?

A. He kept them private.

Q. Did he not send them to others?

A. You are speaking of sealed bids now?

Q. Sure?

A. No, sir; never sent them to the others.

Q. What did he do with them?

A. Just kept them there.

Q. What was the object of sending them to him?

A. There was no object. We gave it up; there was no sense in it.

Q. If nothing was done with the information—I understand nothing was done?

A. Nothing at all.

Q. Do not repeat that. I accepted it the first time.

A. All right.

Q. Assuming nothing was done with the information that you got in that way, how did you find out what the bids of these different concerns were, so as to know whether they got 60 per cent or 40 per cent or their fair share of the trade?

A. We only know in tonnages; we do not know at all the individual bids when they were sealed; we didn't have any idea.

Q. How could you know?

A. At the end of each month the Secretary reports to the whole society the tonnage taken by each member during the past month, the total tonnage, without any regard to orders.

Q. And the price also?

A. No; not with that report.

Q. By another report?

A. You see I could help you a little—

Q. You need not.

A. But you are talking about sealed bids.

Q. I do not care whether it is sealed or whether it is not.

A. Well, there is a great difference.

Q. I suppose so. But somehow or other you got at each of these monthly meetings—

A. Now—

Q. Listen to me. You got at each of these monthly meetings, through information furnished to the Secretary and by

him submitted, a full statement as to the tonnage that every-one of you put out, and the prices that they got?

A. No; we did not.

Q. I thought you said under a separate report you got the prices?

MR. DICKINSON: No; he has not said that.

A. No.

MR. LINDABURY: Let us get this right. The Judge knows better than I do. I am only seeking information.

MR. DICKINSON: No; I only know what he said.

MR. LINDABURY: You did not know before?

MR. DICKINSON: No; never asked about it and did not know about it at all.

MR. LINDABURY: I beg your pardon, Judge.

THE WITNESS: What is your question now?

By MR. LINDABURY:

Q. You got information, you told us a little while ago, about the prices that your members got?

A. Yes.

Q. How did you get it?

A. From every man that bids on a piece of work, all the prices are exchanged between the ones that are bidding on that piece of work, but given to no others in the society.

Q. That is, you only exchange information with the actual competitors?

A. That is exactly right, the actual competitors.

Q. You extended a very kind invitation to me to attend these meetings?

A. Yes.

Q. Did you ever extend one to Mr. Colton?

A. Yes.

Q. And did he attend?

A. He did.

Q. And when did he attend?

A. Oh, he has attended several.

Q. Several of them. Was that when you and he were working up this information you had tabulated here this morning?

A. Not at all.

Q. It was not then.

A. No.

Q. When did he first begin to attend them?

A. I can't remember; probably a couple of months ago; two or three months.

MR. COLTON: I object to that as hearsay.

By MR. LINDABURY:

Q. Was that when the sealed bids went out?

A. No, sir; he had nothing to do with the sealed bids.

Q. Were you in the sealed bid business when Mr. Colton began to attend the meetings?

A. I don't remember that. That has no relation to it at all.

Q. No; a coincidence.

A. No, it is not even a coincidence.

Q. Well, you seem to have stopped the sealed bid business about the time you say Mr. Colton began to first attend the meetings.

MR. DICKINSON: No; he did not state that at all.

A. No.

MR. LINDABURY: Didn't he?

MR. DICKINSON: He did not state anything like that.

THE WITNESS: No.

MR. LINDABURY: Hold on, Judge, you cannot get away with that.

MR. DICKINSON: I do not object to your examination, but I do object to a statement of that sort asserting the witness made that statement when he did not make it.

MR. LINDABURY: That is right, but I think you are wrong in your facts.

MR. DICKINSON: Read the record.

By MR. LINDABURY:

Q. Did you not say Mr. Colton began attending the meetings about two months ago?

A. I think it was about two months ago.

Q. And did you not say you gave up the sealed bids about two months ago?

A. I did.

Q. I will leave it to the Judge to work out whether that is a coincidence. The American Bridge Company was not a member of this society, was it?

A. No, sir.

Q. That was the independent?

A. Yes.

Q. The independent got 100 per cent of its capacity and the combination got only 60 per cent, and that is your grievance?

A. I did not say I had any grievance.

Q. Maybe I ought not to have used that term. But, anyhow let us see how you worked that out. You said you thought that the American Bridge Company must have an advantage over you or that they have an advantage over you in this bidding. I suppose because it got the business.

A. I explained this morning why I thought they had the advantage.

Q. You said you thought they had an advantage over you because they owned more of the processes by which this work was produced?

A. I can't think of any other reason.

Q. Let us look a little into that, Mr. Dean. You think a fabricator who owns some of the processes that precede the fabricating has an advantage over the mere fabricator who has to buy the materials for fabrication and does no part of the work except to fabricate. Is not that your idea?

A. Yes.

Q. Your company did something more than fabricate, did it not?

A. Yes; that is the Phoenix Iron Company; not the Phoenix Bridge Company.

Q. The one or the other.

A. We got about 60 per cent of our materials from the Phoenix Iron Company.

Q. The fabricating company is owned by the iron company, so you told us, did you not?

A. Yes, sir.

Q. Very well. Then you had an advantage, did you not, in your business, over a mere fabricator?

A. Well, to that extent, possibly.

Q. To that extent?

A. Yes.

Q. What is the process next before that pursued by the Phoenix Iron Company?

A. Next before what?

Q. What does the Phoenix Iron Company make that is used in structural work?

A. We make open hearth steel and roll it.

Q. Have you furnaces?

A. Yes.

Q. And what is there in the process of producing the finished structural steel that you do not have?

A. We have not the pig or ore.

Q. Now, the more that any one company has of those processes, the better position it is in to complete with others, is it not?

A. I should say so.

Q. And all you meant to tell us this morning, I take it, therefore, was, that a company which owns its ore and its transportation facilities and its furnaces, can make its pig and its bars and finally its shapes at an advantage over a concern that has only one or two processes?

A. I think so.

Q. That is all you meant to say, is it not by your testimony on that subject?

A. That is what I meant.

Q. That is the only advantage you meant that the Steel Corporation had?

A. Yes, and its transportation of course comes in.

Q. I meant to include the transportation. That is what you call nowadays integration, is it not?

A. Yes.

Q. So that the more a concern is integrated, the more it can compete for the trade of the world; is not that so?

A. What is that again?

Q. The more a concern is integrated, that is the more completely it owns the processes from the ore field to the finished product, the better it can compete in the world for the trade of the world. That is what you meant, is it not?

A. I do not know whether that is the logical conclusion or not.

Q. I thought that was what you meant us to understand, that the Steel Corporation has an advantage by the fact that it owns its own ore, its own transportation facilities, and all the processes down to the turning out of the finished structural material. That is what you meant, is it not?

A. Yes.

Q. And it has an advantage in the trade over any concern that has not equal facilities, I take it. That is what you mean, is it not?

A. It might market any one of its products throughout the world to advantage, but whether it could market its entire products to advantage, I am not certain about that.

Q. Take the structural steel with which you are concerned. What I meant was that by owning all the processes back to the ore field by which structural steel is produced, it had an advantage over the concern that owned only some of them?

A. I question whether throughout the entire operation the Steel Corporation's prices are low throughout the entire operation from the ore to the finished product. I question it very much.

Q. I do not think you understood me.

A. I think I understand you.

Q. You may understand what you are saying, but I do not think you understood the question.

A. I thought I answered your question.

Q. No, it does not answer it. The question is whether or not you consider it an advantage to a structural steel man, a commercial advantage, I mean.

A. To a structural steel man?

Q. To a structural steel man, to own all the processes by which that structural steel is produced from the ore all the way down?

A. Yes, the structural steel man can sell lower under those conditions.

Q. That is what I meant.

A. That is right, the structural man.

Q. The disadvantage you refer to, that your combination is under against this independent is because the members of the combination do not own these processes so extensively; is that right?

A. What combination are you speaking of?

Q. Association, I should have said.

A. I am not talking for the association.

Q. I think you called them this morning by the erroneous name of independents. You said that they were—

MR. DICKINSON: You mean the members of that association?

MR. LINDABURY: Colton's association.

MR. DICKINSON: I do not think he referred to the association.

MR. LINDABURY: He said that the members of the association only got 55 to 60 per cent.

MR. DICKINSON: He said the independents, as I understood him, those that compete with the Steel Corporation.

MR. LINDABURY: He knew nothing about the records of anything but that association.

By MR. LINDABURY:

Q. You do not know what the independents, so to speak, outside of your association and the American, bid on or got, do you?

A. Not as definitely as—

Q. These statistics all come from the association?

A. The more exact statistics.

Q. The statistics you were giving us this morning, about the 55 or 60 per cent the independents got, were the statistics gathered from that association?

A. Based on that.

Q. Then what you meant was that you found by an interchange of views before and after discussion with these gentlemen in that association that they were not in as good position to compete as the American, because they did not own so many of the processes by which the steel was produced?

A. I did not have to go there to find that out.

Q. You knew that without that?

A. I did.

Q. Who got up this association of yours? It was not Mr. Jackson, was it?

A. Who is Jackson?

Q. It was not Mr. Jackson of New York?

A. No.

Q. Who was it, do you know?

A. I cannot say that any one person was responsible for the organization. I think we all thought we needed it.

Q. Was not there some man who organized it?

A. No.

Q. No lawyer?

A. Oh, we have lawyers—

Q. Did you ever have a lawyer there except Mr. Colton?

A. Oh, yes, we had counsel all the time.

Q. Who was it?

A. Mr. Arthur J. Eddy.

Q. Mr. Eddy of Chicago?

A. Yes, of Chicago. You know him.

Q. Did that association have a constitution and by-laws?

A. Yes.

Q. I want to read you the fifth article of the constitution and see if it sounds familiar to you?

MR. DICKINSON: I do not object to it, but I think it is hardly a proper way to proceed.

MR. LINDABURY: It is just exactly the way you examined the witnesses about the Jackson constitutions—

MR. DICKINSON: Oh, no. I showed it to them.

MR. LINDABURY: I will show it to this witness, then.

By MR. LINDABURY:

Q. Look at the fifth article of the constitution of your society, which I now hand you, and see if you recognize it.

A. (After examination). Yes, I recognize it.

Q. That reads familiarly to you?

A. Yes.

Q. The fifth object is:

“5. To establish frankness in the exchange of information regarding bids, terms and prices actually made. To this end each member of the society agrees to file with the secretary copies of all bids, terms and prices within such period after same are made as may be reasonably required by resolution or by-law, it being definitely understood that each member

is at all times free to make such bids and quote such terms and prices as he pleases, and to change the same at will, either before or after filing with the Secretary, either before or after receiving information regarding bids, terms and prices made by others, the only obligation being to file promptly all bids, terms and prices as the same may be from time to time made."

Q. So that after you got the bids of your competitors each man had the right to change his own bid?

A. Yes. We did not limit competition. The object was not to restrict competition at all. Each bidder had a right to change his bid whenever he chose, and the whole object of the society was to make the bidding open the same as if we were bidding on work in New York City.

Q. And this was the way you did when the freeholders or the supervisors asked for secret sealed bids?

MR. DICKINSON: I object to the statement of counsel as to supervisors, it not having been proven that there were any supervisors of that association, and it is a voluntary statement of counsel.

By MR. LINDABURY:

Q. Did not the members of your association compete for public highway bridges?

A. Certainly; I suppose they did.

Q. And was it not the custom for freeholders or supervisors, or whoever they were or whatever they were called, who had charge of the construction of the highway bridges, to ask for sealed bids?

A. Not at all. Nothing of the sort at all.

Q. When did you send in the sealed bids you have been talking about?

A. Two or three months ago we thought it would be advisable to do it.

Q. To do it, or to give up doing it then?

A. Two or three months ago we decided to do it, and then finally gave it up. Our customers had nothing to do with that.

Q. Did municipal ordinances generally call for sealed bids?

A. That has no relation to—

Q. Just answer that question. You always sent your bid in sealed, to railroads or any municipality; you sent in your bid sealed?

A. That would not necessarily—

Q. Now, wait. I want you to answer my questions, and then you may explain until doomsday if you want to. That being so, your bids were sent in to different public bodies were they not? In practice, I mean?

A. Yes, always.

Q. It was immediate information in regard to those sealed bids that this section of the constitution provided for, was it not?

A. Not at all; it had absolutely nothing to do with it.

Q. Did you not, under the operation of that section of the constitution, send immediate information to the secretary, of the sealed bids?

A. The sealed bids that you—

Q. No, no; answer that question, if you know, and then you may explain as far as you want to. Did you or not, in practice, under the obligation of this section of the constitution which I have just read to you, immediately upon sending in the sealed bids, send the information with regard to them to the secretary?

A. To the secretary, yes.

Q. That is what I asked you. Now, if you want to explain, you may do so.

A. I wanted to explain that the fact that it was a sealed bid we were submitting to a railroad company or a municipality had nothing to do with the sealed bids in the society. The sealed bid in the society was to conceal that information from the other members of the society. It had nothing to do with the sealed bid you are speaking of. You are speaking of another thing—

Q. No, you misunderstood me. I was not concerned with the sealing inside of the society because I never did think that amounted to anything.

A. That is exactly what it was.

Q. Exactly; but the bids you were to put into the municipality, under seal, and therefore secret, was immediately communicated to all your members, was it not?

A. Certainly; absolutely.

Q. To all the different ones who put them in?

A. Absolutely open, yes, and it is still.

MR. LINDABURY: So I understand. That is all.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Dean, did that society have any supervisor?

A. No.

Q. Did the members of that association announce to each other what their bids were going to be, and then, as the announcements were made by the different members, reach an understanding as to a common price?

A. No, absolutely no.

MR. LINDABURY: I object to this as cross-examination of counsel's own witness.

MR. DICKINSON: It is perfectly legitimate. You went into that matter yourself. You made him your witness on that, and I have a right to cross-examine him. There is no question about that.

MR. LINDABURY: I beg your pardon, Judge. I say you have not such a right. You have not a right to lead the witness, and you have not a right to ask him this anyway, which is not what he did, but what he did not do. You might as well ask him if he said his prayers—

MR. DICKINSON: Yes, I can ask him what he did do, and I will ask him what he did do.

By MR. DICKINSON:

Q. Was there an understanding between the members of that association when you left there, as to a common price or the same price that you were going to bid for the same work?

A. There was not.

Q. Was there any understanding or not among the members of that association when you left there, that upon any particular class of work you were going to fix a common price and would not change that price until you gave notice to the other members of the association?

A. There was not.

Q. Was there any agreement that you would not compete with each other?

A. No, sir.

Q. Was there any agreement that you would not seek to get each other's business?

A. No, sir.

Q. Did you have a chairman of the meeting?

A. Yes.

Q. State whether or not at any of those meetings he admonished you that you were under a moral obligation not to attempt to get the business of your competitors?

A. Yes. (Laughter).

Q. Who said that?

A. Counsel.

Q. Your counsel? What did he say?

A. If I understood your question—

MR. LINDABURY: Read that question and answer, please.

(The stenographer read as follows):

“Q. State whether or not at any of those meetings he admonished you that you were under a moral obligation not to attempt to get the business of your competitors?

“A. Yes.”

THE WITNESS: I wish to correct that. That is wrong.

MR. DICKINSON: You got a laugh out of that that you were not entitled to.

MR. LINDABURY: Yes, we were entitled to it.

By MR. DICKINSON:

Q. Correct your answer, if you desire to.

A. I would answer no to that.

Q. Was there any understanding, directly or indirectly, as to carrying out until further notice to members of the association as to maintaining any price?

A. No.

Q. As I understand your description of your process, each member filed his bid on any particular work he was to bid on?

A. That is right.

Q. That was made known to the other members who were competing on like work?

A. Yes.

Q. And if they wanted to bid also they could do it?

A. Yes.

MR. LINDABURY: I protest against these leading questions asked your own witness.

MR. DICKINSON: I think you ought to be quite accustomed to it from your own practice.

MR. LINDABURY: You do not understand the difference, apparently, between direct examination and cross-examination.

MR. DICKINSON: I do understand the difference between direct and cross. When you have gone into a field with a witness I have introduced, and have taken up new matter with him, you make him your own witness as to that, and it is perfectly right under the rule for me to lead him in cross-examination. I understand that to be the law.

MR. LINDABURY: That statement is not accurate.

MR. DICKINSON: That is my understanding.

MR. LINDABURY: You yourself proved the existence of the association and the getting of information, and I cross-examined him upon it.

By MR. DICKINSON:

Q. Before the American Bridge Company was taken over by the Steel Corporation, was it or not a competitor of yours, and other independents in bridge work and steel structure?

MR. SEVERANCE: Which do you call the independents?

MR. DICKINSON: Those you spoke of outside the American Bridge Company. I will change that question.

By MR. DICKINSON:

Q. State whether or not before the American Bridge Company was taken over by the United States Steel Corporation your company competed with it in structural and bridge work?

A. We did.

Q. At that time did the American Bridge Company control transportation?

A. I think not, no.

Q. At any time did the American Bridge Company control ore?

A. I think not.

Q. State whether or not after it came under the control of the United States Steel Corporation, which controlled both transportation and ore, you felt a difference in the competition and the power of the competition?

A. I did.

Q. You were asked about marketing to advantage, and stated that a concern that had ore and transportation and the other facilities that were mentioned might, in your judgment, market one product to advantage, but not necessarily all. I would like you to explain more fully just what you mean by that.

A. My idea is that if we took the prices for their entire product from the ore, their transportation, their billets, their rolled material, their fabrication—took all those processes from the top to the bottom—I question very much if it shows that they could compete in their products, or that the prices were lower on account of the combination.

Q. What did you mean by marketing to advantage one product?

A. I meant that they could market any one of those products by taking care of some of the cost in the other products.

Q. Explain what you mean by that?

A. I mean that if the American Bridge Company had a bridge to construct, they might either absorb some of their costs——

Q. Who might?

A. The American Bridge Company or the Steel Corporation absorb it for them. Some of the cost of the rolling of the material or the fabrication or the erection in some of their other products.

Q. That is to say, your idea involved the fact that the American Bridge Company might be stronger in competition by having some of its costs absorbed by some of the other of the constituents of the Steel Corporation?

A. That is the only way I can explain some of the competition.

Q. You were asked about the number of plants that were

engaged in fabricating work as set out in this book that was shown you. What class of fabricants does that embrace?

A. The greater number mentioned were very small companies or plants engaged in light highway work and other light structural work, and their product was more localized.

Q. Were they or not the plants that came in competition with you and the American Bridge Company and the other concerns like you that were competing with the American Bridge Company for bridge and structural work?

A. They were the ones that the American Bridge Company absorbed.

Q. No, no. I understood you to say that in this large number there were a number of local plants?

A. Yes, sir.

Q. Did those plants come in competition with you and the American Bridge Company in the construction of bridge work and structural work?

A. Not to any serious extent, I think.

Q. You did not include them in your estimate of those who were competitors in that class of work?

A. That is right.

MR. COLTON: I move to strike out all references to my name or to the society as "my association" on the ground that I was attending the society by reason of an invitation extended from the Society to the Department of Justice to investigate it. I imagine that the references were in fun, but I want the record to show that.

MR. LINDABURY: I would like to debate that matter before the Court. Do you give notice that you move to strike out or will move to strike out, when we go to Philadelphia? Is that right?

MR. COLTON: No. I will ask counsel if they will strike out all reference to that. I would rather not have it in the record in such form.

(Thereupon, at 3:30 o'clock p. m., the hearing was adjourned until Tuesday, May 21, 1912, at 10:15 o'clock a. m.)

TENTH DAY.

ROOM 210, CUSTOM HOUSE,
NEW YORK CITY,

TUESDAY, MAY 21, 1912.

The hearing was resumed at 10:15 o'clock a. m., before
SPECIAL EXAMINER HENRY P. BROWN.

Appearances the same as heretofore noted.

MR. DICKINSON: It having been called to the attention of counsel for the defendants by counsel for the Government that the record does not show that agreements and rules and regulations of the Bare Copper Wire Association were offered in evidence, counsel for the Government now offer the same in evidence, and, by consent of counsel for the defendants, it is agreed that the record shall show that the same are a part of the evidence and that those papers shall be included in the exhibits, marked "Government Exhibit No. 34-A."

JOHN C. LANGAN,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

By MR. DICKINSON:

Q. Where do you live, Mr. Langan?

A. In Brooklyn.

Q. What is your age?

A. Forty-one.

Q. In what business are you now engaged?

A. Real estate.

Q. Were you ever at any time associated with Mr. W.

C. Temple?

A. Yes.

Q. As an assistant to him?

A. I was private secretary for W. C. Temple from July 1902, to December, 1906.

Q. I will ask you, Mr. Langan, whether or not you have

conferred with Government counsel as to what your testimony would be in this case?

A. No, sir.

Q. I will ask you whether or not you have refused to confer with them or talk with them on the subject?

A. I asked to be excused from any conference until this occasion here now.

Q. And, as a matter of fact, you have declined to give them any information?

A. That is true.

Q. At the time you were associated with Mr. Temple in the way you have spoken of, what was Mr. Temple doing?

A. Mr. Temple was engaged in quite a number of businesses, you might say. He was particularly in the business of steam boilers, and he was a considerable owner in the Pittsburgh base ball club.

Q. In addition to his connection with these matters to which you have referred, state whether or not during that time he was in charge of any pools and the administration of any pools, and if so, what they were.

A. I assume by "pools" you mean associations, as we called them?

Q. By "pools" I mean associations that were formed by manufacturers of different classes of material sold in trade with a view of concerted action in respect to the selling of those articles.

A. Yes; Mr. Temple was commissioner of three associations.

Q. Of what associations was he commissioner?

A. One was known as the Structural Association; the Steel Plate Association; and the third, the Steel Shafting Association.

Q. State what his duties were in connection with each of those associations, if they were generally the same, and if he had duties in respect of one that he did not have in respect of others, specify what those special duties were.

A. They were practically the same in all three associations.

Q. Describe what they were.

A. As nearly as I can describe his duties, they were to at-

tend various meetings that were held of these associations, to receive reports of the various companies as to their shipments, etc., and to compile those into one report and send it out to those members.

Q. Did you or did you not assist him in the performance of these various duties?

A. Quite a great deal, yes, sir.

Q. From the time you spoke of, in July, 1902?

A. No; I think I took up the work of those associations early in 1903.

Q. And how long did you continue in that work?

A. Until 1906.

Q. Until what date in 1906?

A. I think the last statement that I ever made up was the statement of October, 1906, which was made in November of that year, as nearly as I can recall.

Q. What did that statement show?

A. The last statement that I made simply showed, as nearly as I can recall, the tonnages of orders booked, those sold and those shipped.

Q. By the various members of the Association?

A. Yes, sir.

Q. Take the Structural Association; what was the name of that,—the Structural Steel Association?

A. Yes, sir; that is what I would call it.

Q. Who were the members of that association,—what corporations or partnerships?

A. I think there were about six or seven in that. There was the Carnegie Steel Company; Jones & Laughlin Steel Company; the Illinois Steel Company; the Phoenix Iron Works, the Pencoyd Iron Works.

Q. Was that the A. and P. Roberts Company?

A. I think it was, yes, sir. And, later, the Lackawanna Steel Company and the Cambria Steel Company, I think.

Q. Do you remember whether or not the Universal Construction Company was a member of that?

A. It was not, in my time.

Q. If it was, you do not recall it?

A. Under that name, no. I do not know anything about that company.

Q. Do you recall whether or not the Pottsville Iron & Steel Company was?

A. It was not during my time. I never knew anything about them.

Q. How about the Cleveland Rolling Mill Company?

A. Neither were they.

Q. How about the American Steel & Wire?

A. Of the Structural? Not to my knowledge.

Q. What was that?

A. Of the Structural Association, no.

Q. State whether or not this Association met from time to time?

A. It did.

Q. Did the representatives of these various companies attend the meetings?

A. They were generally all there. Once in a while some might not be there—

Q. State who represented the Carnegie Company at those meetings?

A. Mr. H. P. Bope.

Q. Any others at other times?

A. No one else that I recall.

Q. Who represented Jones & Laughlin Limited.

Q. Mr. Willis L. King.

Q. Any others?

A. No. He usually was there. Once in a while Mr. Geddes would be there, one of his assistants.

Q. One of whose assistants?

A. Mr. King's assistants.

Q. The A. & P. Roberts Company?

A. I have forgotten the name. He was a small man, the man who attended those meetings. I would recall it if you suggested it to me.

Q. Who represented the Passaic?

A. Oh, yes, the Passaic Company was in. I forgot them.
A. C. Fairchild, I think it was, represented them; and sometimes Mr. F. S. Searing.

Q. Who represented the Phoenix Iron Company?

A. George Gary White, usually.

Q. Who represented the Cambria?

A. Mr. Powell Stackhouse.

Q. How often did those meetings take place?

A. Sometimes monthly, sometimes quarterly.

Q. You say that was the Structural Steel Association?

A. Yes, sir.

Q. State whether or not the parties to the Association were manufacturers and sellers of steel, I-beams—

A. Yes, they were.

Q. And channels of sizes not less than three inches in depth?

A. Yes.

Q. Was there or was there not any apportionment of percentage allotted to the different members of that Association?

A. For a time there was, yes, sir.

Q. On what basis was that allotment made?

A. Those allotments were originally made before I came into the Association.

Q. There were allotments; you know that?

A. Yes.

Q. Were those allotments observed in the settlement of the Association?

A. They were, I think, for a time.

Q. What do those allotments mean? That is to say, please explain what the allotments were.

A. As near as I can explain, I would say that they represented the ability of each company in its output originally claimed, and, later on, actual output. That is to say, as near as I can recall, the allotment for the next year would be based upon the actual tonnage for this year.

Q. That is, the proportion that each one could sell?

A. No; the proportion that each one shipped, the proportion of the whole.

Q. What was the whole?

A. The total shipments of those companies belonging to the association.

Q. That would be represented by 100 per cent, would it?

A. Yes.

Q. And then the allotment would be the proportion of that 100 per cent. that each one shipped?

A. Yes, sir.

Q. Based on the preceding year?

A. Yes, sir.

Q. Suppose a company shipped more than that allotment; what effect would that have under the agreement?

A. There was a tax on excess shipments. I think the tax was \$2 a ton when I first went in, and later—no, I remember the tax was \$4 a ton when I first went in, and then later it was reduced to \$2 a ton.

Q. Where did that tax go?

A. That went to the short-shipped members.

Q. To whom was it paid in the first instance?

A. I understand to Mr. Willis L. King, the Treasurer. I did not handle the money myself. When I say "I," of course I speak in my capacity as an employe of Mr. Temple.

Q. Did that association have offices?

A. Yes.

Q. Did it have a president?

A. I think it had what we called a chairman.

Q. You have already mentioned the Treasurer.

A. Mr. King, the Treasurer; and I think a Chairman.

Q. You have mentioned a commissioner.

A. A commissioner.

Q. State whether or not it had any committee such as an executive committee?

A. Not that I know of.

Q. Not that you recall?

A. No.

Q. Who was the Chairman during the period that you speak of?

A. I think Mr. Powell Stackhouse. I am not sure as to the Structural. You are speaking of the Structural?

Q. Yes.

A. I am not sure as to the Structural.

Q. But as to the Structural, that is your best recollection?

A. Yes.

Q. Were any statements rendered to the Commission by the different members of the Association of their shipments?

A. Oh, yes; each month.

Q. Were they under oath or not?

A. I think for a time they were under oath.

Q. What did these statements show?

A. I stated that.

Q. Very well, if you have already stated it. What was the Commissioner's duty in respect of the other members of the Association when he received these monthly statements?

A. To draft them into one report and send one on to each member.

Q. He would make up a report from those statements?

A. Yes.

Q. And advise each member of the Association in regard to it?

A. Yes, they were sent to each member.

Q. Each company would send in its own statement?

A. Yes, sir.

Q. Would or would not the statements sent out by the Commissioner show the statement of each company; how was that?

A. I think it showed it in every detail.

Q. Do you know where the depositary of that association was?

A. No, sir.

Q. I will ask you who are T. Mellon & Sons?

A. There is a Mellon & Sons, Bankers, in Pittsburg.

Q. Do you know whether or not they were the depositary?

A. I do not know. I think they are the Mellon National Bank now.

Q. State whether or not the different members of this association made a deposit with the association or any officer of it?

A. They did not with the Commissioner. I do not know of any other.

Q. Do you know anything about the New Jersey Steel & Iron Company?

A. No, sir.

Q. Do you know anything about any contract or agreement with that company?

A. No, sir.

Q. Suppose a member of this Association had reason to believe that another member had violated the agreement,

what action, if any, would be taken, and what course would be pursued?

MR. LINDABURY: I object to that as calling for the contents of the agreement. I think the agreement is in evidence.

MR. COLTON: No, it is not.

MR. DICKINSON: That is the trouble. Your answer is rather evasive on that. That is one reason I have to go through this this way.

MR. LINDABURY: Let us see about this. Just wait a moment. You annex what you allege to be a copy, Exhibit B.

MR. DICKINSON: Yes.

MR. LINDABURY: I think we admitted that: "upon information and belief, they admit that in 1897 certain makers of structural steel entered into an agreement among themselves," and so forth. Is not that a full enough admission?

MR. COLTON: It does not say who entered into the agreement or whether it was these particular people that entered in. From that answer you would never know whether those companies were in it or not. You would not know who represented those companies. You say "certain makers." That might mean certain ones or all.

MR. LINDABURY: But we admit this is a copy.

MR. DICKINSON: You admit that is a copy of the agreement entered into by the parties, as shown on page 76 of the Government's Petition?

MR. LINDABURY: Yes. I cannot put any other construction on the answer. You see we admit upon information and belief, but for the purposes of the case that is a sufficient admission.

MR. DICKINSON: That exhibit B on page 76 is a copy of an agreement that was entered into at the date therein named by the parties therein.

MR. LINDABURY: Yes.

MR. DICKINSON: By the parties whose names appear on page 76?

MR. LINDABURY: Yes.

MR. DICKINSON: Page 76 of the bill.

MR. LINDABURY: That is what I understand to be the effect of our answer, yes.

MR. DICKINSON: Now there is one other thing: Do you agree that the parties so named acted under and in conformity with this agreement down to any period? That is what I am trying to prove.

MR. LINDABURY: Therefore I was not objecting to any of your previous questions, but this last one simply asked for a term of the agreement, you know.

MR. DICKINSON: I would not have asked that if I did not understand your answer——

MR. LINDABURY: You had better make your proof of what they did under it. It is our information, Judge, that that agreement was not carried out fully.

MR. DICKINSON: It was not carried out fully?

MR. LINDABURY: The fines were not imposed, and some other things. You had better get that out by proof. That is the only reason we do not want to make the full stipulation you refer to.

MR. DICKINSON: I would like if you would show just what you do admit and what you deny, because it would narrow the proof very much. Otherwise, I will have to go on and pursue my own method.

MR. LINDABURY: Well, I have not taken that up sufficiently with either my associates or my clients to quite do that now. My information is that in a general way they went on with that, but in a great many respects they either departed from it or failed to carry out the provisions. I am not at this moment prepared to indicate in what respects that was, so I think perhaps you had better go on.

MR. DICKINSON: What was my last question to the witness?

(The question was read by the stenographer as follows):

“Q. Suppose a member of that association had reason to believe that another member had violated the agreement, what action, if any, would be taken and what course would be pursued?”

A. Well, by violation of the agreement I assume you mean took a contract that the other man wanted, or took business that the other man wanted?

By MR. DICKINSON :

Q. Supposing he sold more than his allotment?

A. I never heard any discussion of that except at the end of the year.

Q. What would take place if one had violated the agreement?

MR. LINDABURY : You mean exceeded his allotment, Judge?

MR. DICKINSON : Yes.

MR. LINDABURY : He has said he paid in and what he paid in was distributed among those who sold under the allotment. He has covered that.

By MR. DICKINSON :

Q. What do you mean by taking business that the other man wanted?

A. Well, they all wanted all they could get, and sometimes if a man lost an order he would think perhaps that some body else took it away by some underhand method, and if it came up for discussion he would ask him, first, if he got such and such business, and if he answered yes, he would ask him how he got it, and he would perhaps tell him just how he got it, and that would settle the matter.

Q. That would settle the matter in what way?

A. Often it was found that buyers were bidding one against another, and that the buyer was not getting any advantage from one that he could get from another.

Q. How about price, though?

A. Prices were usually fixed.

Q. By the association?

A. Yes.

Q. That was one of the elements of the agreement, was it not?

A. As near as I can understand, yes.

Q. Did not they have a schedule of prices which they lived up to?

A. Yes; they had fixed prices.

Q. They all agreed to be bound by that price until it was changed?

A. Yes, sir.

Q. By agreement?

A. Yes, sir. That seemed to be the agreement. They all understood that was the price.

Q. And they all were to sell at that price?

A. Yes.

MR. LINDABURY: If they all sold at that price, there would be nothing to find fault about.

MR. DICKINSON: They would not find fault with each other, but the public might find fault.

MR. LINDABURY: But you were speaking of their complaining about selling under the price.

MR. DICKINSON: That was another matter.

MR. LINDABURY: That is all I meant.

By MR. DICKINSON:

Q. They did have pool prices?

A. They had a fixed price for it.

Q. A fixed price. Fixed by the members and by the association?

A. Yes, sir. That was not during the entire experience I had with them.

Q. But it was during part of the time?

A. Yes, sir.

Q. How long during the period you were with them did the association sell according to price fixed by the association?

A. I think that was up until the latter part of 1904.

Q. Did they continue the association after 1904?

A. They continued to meet, yes, sir, and kept up what they termed a statistical bureau which the commissioner took charge of, the same as he had taken charge of the shipments and tonnages before.

Q. Did the allotments continue after that time?

A. Yes, sir.

Q. Did the association meet?

A. Yes, sir.

Q. Did they discuss prices?

A. Well, I guess perhaps prices were discussed in those meetings in a general way.

Q. Was any announcement made by the different members as to the price at which they were going to sell, or not?

A. Yes; I have heard the members say: "I will sell my product at such and such."

Q. Did or did not the different members go on making those announcements?

A. Yes.

Q. What would the final announcement be? Would it be the same price or not?

A. Yes; there would be a general understanding.

Q. A general understanding when they left as to what the price would be?

A. At what price each member was going to sell, and that was usually the same price.

Q. How long was that continued?

A. There was no time fixed.

Q. Was there any understanding that they were to give notice or would continue that until there was notice given?

A. No, sir.

Q. As a matter of fact, how long did it continue?

A. Sometimes until they got outside of the room.

Q. But generally how was that?

A. Well, sometimes, you would not hear any complaints for a long time; sometimes you would hear them quickly.

Q. What complaints, and what kind of complaints?

A. Quite frequently a man would come to the commissioner with a story that he had heard that such and such a concern was selling steel at a ridiculous price, and he would ask him if he could not find out if that were true. The commissioner would usually ask the man who was charged with selling his steel at a ridiculous price if it were true, and he would tell him either yes or no.

Q. Then what would take place?

A. And then perhaps the man, if he had been selling at a killing price, would be asked to explain why he did it.

Q. Then go on.

A. Generally he would say not much of anything.

Q. Say not much of anything?

A. No.

Q. State whether or not before they would leave they would make another announcement of prices?

A. Yes.

Q. I mean all of them.

A. There would be usually only one interest there to make any announcement at all; the others had been doing the best they could and getting business the best they could.

Q. What do you mean by "doing the best they could"?

A. Trying to get the best prices possible for their product.

Q. Had they been selling generally at the same price or not?

A. That was the assumption, yes, but it was not true.

Q. That was their understanding of what each was going to do, was it?

A. Yes; that was assumed to be the understanding, but it was not true.

Q. That was assumed to be the understanding, that they were going to sell at a common price?

A. Yes.

Q. But sometimes they would find out that a man had not been doing that. Then you say they would charge him with selling at a ridiculous price?

A. Yes.

Q. And would he make explanation?

A. Sometimes, if it were true, but sometimes it was not true, that he had sold at a ridiculous price.

Q. Then would he make another announcement before they left?

A. Yes.

Q. State what that price would be, whether or not it would be the ridiculous price or the price that they had heretofore understood?

A. Usually it was what they termed a reasonable price.

Q. Did they say what that price was in dollars and cents?

A. Yes.

Q. That was a common price, understood by all?

A. Generally understood to be; yes, sir.

Q. Now, we have been speaking of the structural pool. You stated also that there was a plate pool?

A. I have always been educated to call them associations; never pools.

Q. We will use the more euphonious and less offensive term of "association." There was also, you stated, a plate association?

A. Yes, sir.

Q. Who were the members of that association?

A. As near as I can recall them they were the Carnegie Steel Company, Jones & Laughlin, Cambria Iron & Steel Company, Worth Brothers, Lukens Iron & Steel Company, Central Iron & Steel Company, Illinois Steel Company, Glasgow Iron Company, Tidewater Steel Company and Lackawanna Steel Company.

Q. Did you mention the Crucible?

A. And the Crucible Steel Company. I did not mention them. They were in.

Q. Did you mention the Otis Steel Company?

A. The Otis Steel Company was in also.

Q. Did you mention the Lukens Iron & Steel Company?

A. Yes, sir.

Q. And did you mention Worth Brothers?

A. Yes, sir; I mentioned them. There were about 12 of them, I think.

Q. Did you mention the American Steel & Wire Company?

A. No, I did not.

Q. Was that Company in?

A. They were in too. There were about 12 of them.

Q. State whether or not this Association, so far as your connection with it went, continued during the same period that you have spoken of with regard to the Structural Association?

A. Yes; it did.

Q. Now, at these meetings who represented the Carnegie Company—I mean the meetings of the Plate Association?

A. Colonel H. P. Bope.

Q. And Jones & Laughlin?

A. Mr. Willis L. King.

Q. Take the Illinois Steel Company. Who represented them?

A. George Baker.

Q. And the Crucible Steel Company?

A. One of the Parks.

Q. The Otis Steel Company?

A. Mr. Bartol.

Q. The Tidewater Steel Company?

A. I do not remember the gentleman's name.

Q. The Lukens Iron & Steel Company?

A. Mr. A. L. Huston.

Q. Worth Brothers?

A. W. P. Worth.

Q. The Central Iron & Steel Company?

A. Usually Mr. Bailey. I cannot think for the moment of his initials.

Q. The American Steel & Wire Company?

A. William— I cannot think of his last name for the moment. I know him very well.

Q. Palmer?

A. No.

Q. The Glasgow Iron Company?

A. Mr. Shoemaker. This other man's name is William. I will tell you that. I cannot think of his last name.

MR. DICKINSON: Mr. Lindabury, the agreement and stipulation we entered into just now was as to Exhibit B. Will you make a like one as to Exhibit A.

MR. LINDABURY: Let me see what we say in the answer.

MR. DICKINSON: That is just the agreement in regard to the plate.

THE WITNESS: Hirsh was that man's name.

MR. LINDABURY: We deny there was any agreement constituting the plate association.

MR. DICKINSON: You do?

MR. LINDABURY: Yes. That is at the bottom of page 38. You see what we say in the answer.

By MR. DICKINSON:

Q. State whether or not the members of this association met from time to time?

A. Yes, sir.

Q. What did they manufacture?

A. Generally steel plate.

Q. Did they have officers, and if so, what were they?

A. Yes, sir. They had a Chairman, Commissioner and Treasurer.

Q. Do you know who the President was?

A. The Chairman was the only officer of that character.

Q. Was Mr. Temple the Commissioner?

A. Mr. Temple was the Commissioner.

Q. Who was the Chairman?

A. Mr. Stackhouse.

MR. DICKINSON: Mr. Lindabury, in regard to Exhibit B, while the statement on record covers the names of the parties to the agreement, does it also correctly set forth the percentages? Will you agree to them?

MR. LINDABURY: We admit upon information and belief that that is a correct copy of the agreement in all its parts.

By MR. DICKINSON:

Q. State whether or not the members of this plate association had allotments of percentages?

A. They did, for a part of the time that I was with them.

Q. Do you know what the percentage, approximately, was of the Carnegie Steel Company?

A. As near as I can recall I should say it was around 40 to 45. It was in the 40's.

Q. In the 40's?

A. Yes.

Q. Towards 45?

A. Yes, sir.

Q. I will read you a list of percentages set out here and ask you to state whether or not they accord with your recollection, and if not, whether they differ?

MR. LINDABURY: I object to that, as leading. I think, Judge, you ought to take his recollection, and not read from a memorandum. It is not cross examination.

By MR. DICKINSON :

Q. Do you recollect whether or not it was approximately 46 per cent, that the Carnegie Steel Company had?

A. I could not tell you definitely. I have been out of the business for five years.

Q. But as near as you can state it was about 45?

A. It was in the 40's. I picked out 45 as being my nearest recollection.

Q. The Illinois Steel Company. What is your recollection, if you have any, as to that company?

A. I think they ran somewhere about 6, if I am not mistaken.

MR. REED: As to what time are you asking him?

MR. DICKINSON: The time he was with the Association.

THE WITNESS: They changed during that period.

MR. LINDABURY: They changed from year to year.

MR. DICKINSON: Yes, I know.

The WITNESS: You say 1902. I was not with them in 1902.

By MR. DICKINSON :

Q. When did you go into this Association work?

A. 1903.

Q. You are giving your recollection as of that time?

A. I am giving a general recollection.

Q. You would not undertake to remember those exact figures?

A. No, sir.

Q. What can you say about the American Steel and Wire Company?

A. Do you mean my recollection?

Q. Yes.

A. I think theirs was quite small. I think it was one figure. I do not remember now just what it was.

Q. One figure would be something less than ten, would it?

A. It would be something less than ten.

Q. But you cannot say what it was?

A. No, sir. I do not think it was over five.

Q. Was it about five, as near as you can recollect?

A. I am very dim on those things now.

Q. State whether or not the members of that Association rendered sworn statements to the Commissioner?

A. Yes; they did.

Q. They rendered sworn statements of their shipments?

A. They did for a time.

Q. What would the Commissioner do with them then?

A. He would compile them into one large statement and send them out to each of the members.

Q. So each member would know what the other was doing?

A. Yes, sir.

Q. And the amount they were shipping?

A. Yes, sir.

Q. State whether or not they had a price that they agreed on?

A. The price never entered into this statement.

Q. I am asking you whether the Association did have prices?

A. Oh, yes.

Q. And they were fixed by the Association for a time?

A. Yes, sir.

Q. Below which price the members were not to sell?

A. Yes, sir.

Q. If a member of this association exceeded his allotment, state whether or not the process was the same as you have explained in regard to the Structural Association, and if there is any difference, state what?

A. Practically the same would be asked: What he was doing and how he came to get an increase of business, and sometimes, when he had a decrease in business, he was asked how that happened.

Q. Was there or not a fund paid into it?

A. Yes, sir; there was a tax in that association.

Q. State whether or not money was used to adjust these allotments?

A. I only assume that. I never handled that.

Q. You did not handle the money?

A. No, sir.

Q. Do you know anything about any deposit made by each member of the Association?

A. No, sir.

Q. Suppose a member had reason to believe that any other member of the association had violated any rules or understandings of the association; what course would be taken?

A. Well, if one member thought another was doing something that did not suit him or did not please him or that was not right—

Q. I am not asking as to what might suit him or please him, but I am asking as to something he claimed was in violation of the rules of the agreement.

A. There were not very many rules. I cannot explain to you a violation of something I do not understand. Now, what does he violate?

Q. Suppose he exceeded his allotment. Suppose it came to the knowledge of one member that another member had exceeded his allotment?

A. That was shown in the monthly report.

Q. State whether or not complaints were filed before the commissioner.

A. No, not before the commissioner. As I have told you, the matters would be brought up at a meeting, where a member would be asked how it came that he had such a big tonnage, what he was doing. Sometimes he would explain it very satisfactorily—in fact, generally he would do so.

Q. They accounted to each other for their conduct, under the association agreement, did they?

A. Yes, in a general way, they had obligations to one another.

Q. Did they have periods of settlement at any time, and if so, what were they?

A. Payments of cash, do you mean?

Q. No; periods of settlement. That is, the members of the association?

A. I do not know definitely of any settlements.

Q. How long did this association continue to be governed by the schedule of prices they had agreed on?

A. I think the same period, up to somewhere in the latter part of 1904.

Q. As to that, state whether or not they met.

MR. REED: You are speaking now of the Plate Association?

MR. DICKINSON: Yes, the Plate Association.

THE WITNESS: Yes, sir; they met frequently.

BY MR. DICKINSON:

Q. You have described in respect of the Structural Association what took place in regard to complaints and sales and announcements and understanding as to prices, and understanding when they would leave, et cetera. Now, state whether or not the same is true in regard to the Plate Association.

A. Practically true; yes, sir.

Q. Your answer would be just the same in respect of the Plate Association?

A. Yes, sir.

Q. Now take the Shafting Association. Who were members of that?

A. As near as I can recall, the Union Drawn Steel Company of Beaver Falls; Jones & Laughlin Steel Company; the American Steel & Wire Company; the Cumberland Steel Company; Brightman Compressed Steel Shafting Company; the Bridge Company of Pittsburgh, the first name of which I do not recall; the Buffalo Steel Company; the Hill Clutch Company of Cleveland; the Medart Pulley Company of St. Louis. I think there were thirteen or fourteen in that; I cannot recall——

Q. What did the members of this association make?

A. They made general steel shafting, cold drawn and cold rolled steel shafting; pulley wheels, pulleys and belt wheels, hangers and such things as that.

Q. State whether or not this association was similar in its organization and procedure and methods to the others, generally; and, if not, in what respect it differed from the others.

A. Yes, sir; it was similar.

Q. Did it have a commissioner?

A. Mr. Temple was the commissioner.

Q. Did it have officers?

A. I think, as near as I can recall, we elected a chairman at every meeting, in that association.

Q. Did they have prices fixed by the association?

A. Yes, for a time, like the others.

Q. Up to 1904, the time you have spoken of in regard to the others?

A. About the same time, yes.

Q. After that time, state whether or not they continued to meet together?

A. They did, regularly.

Q. Who represented the American Steel & Wire Company at these meetings?

A. George Rummel, of Chicago.

Q. Did he continue to attend those meetings after 1904?

A. Not very regularly. He was never very regular here.

Q. But did he continue to attend them?

A. He was at the meetings, yes.

Q. Was it ever represented by any other persons at those meetings? I am referring to the American Steel & Wire.

A. I think once in a while it was represented by Mr. Rummel's assistant in the Chicago office. He has a very odd name.

Q. Did the Shafting Association have allotments?

A. Yes, sir.

Q. Percentages in the same way that the other associations had?

A. Yes, sir.

Q. I believe that you said they had a commissioner?

A. Yes, sir; Mr. Temple.

Q. Did they make reports to the commissioner?

A. Yes, sir.

Q. In the same general way?

A. In the same way.

Q. And he made reports to the members of the association in the same general way?

A. The same general way; yes, sir.

Q. After this period you speak of, in 1904, when the price list was not formally agreed to—I believe you spoke of it in that way?

A. Yes.

Q. Did the members of this association continue to meet in the way that you have described as to the other members?

A. I think on further, that the Shafting Association met to a later time and had agreements to a later time.

Q. What time, do you think?

A. I cannot recall, but it impresses itself on my mind now that it was to a later time.

Q. You mean that the other members' agreements continued up to a later time?

A. Yes. How long I cannot say.

Q. But later than these other associations you speak of?

A. Yes, sir.

Q. How long, as near as you can fix it?

A. That association's affairs are harder to remember than the others, because they were a different lot of men, different interests were represented, very minute interests at times. While they were all fine gentlemen they were not the same men at all. In other words, they were not as big in the industrial world as the men in the other associations.

Q. You do not remember them so well?

A. I do not remember their actions so well. I remember all of them, but—well, they were not so stable as the others.

Q. But you do state that that continued under the price agreements to a later period than the others did?

A. I think that is true, yes. How long I cannot say.

Q. Can you fix any time to which that continued?

A. No; because in that association there was never anything absolutely certain at all.

Q. What do you mean by absolutely certain?

A. I mean their agreements were not kept as well as in other associations.

MR. LINDABURY: It perhaps faded out of existence instead of stopping at any definite time.

By MR. DICKINSON:

Q. After this period did arrive when they dropped the regular agreed prices, did they or not continue to meet?

A. Yes; they did.

Q. State whether or not they discussed prices at those meetings and made announcements, and left with a common

understanding in the way that you have described in respect of the Structural Association?

A. No; they did not; not in the way the others did.

Q. In what respect did it differ?

A. Well, when they went out they never knew what they were going to do. At least, the other fellow never knew what the other member was going to do.

Q. But did they have an understanding as to what they were going to do?

A. Yes; they said they would, and sometimes they did not say anything. In other words, there was continual wrangling there.

Q. They did not tote as fair as the other fellows?

A. No, sir; they did not. In other words, many of them would sleep while the meeting was going on, or go down and get a drink.

Q. They would wake up when they would go out after customers, would they not?

A. Some of them had their customers being taken care of while the meeting was going on. That was different.

MR. LINDABURY: That seems to have been an unobjectionable pool, Judge.

MR. DICKINSON: That is all, Mr. Lindabury.

CROSS EXAMINATION.

By MR. REED:

Q. This Shafting Association, to take the last thing up first, broke up while you were still Mr. Temple's secretary, did it not?

A. Yes, sir.

Q. You left Mr. Temple's service in December, 1906, I think you said?

A. Yes, sir:

Q. And it broke up before that time?

A. Yes; I think the previous month or so. In other words, there was nothing in any of the Associations after November, 1906, that I had to do with.

Q. What was the percentage of the American Steel and Wire Company in that Shafting Association?

A. I do not recall definitely. I would not say it was over 3.

Q. Not over 3 per cent?

A. No.

Q. Was there any other subsidiary of the United States Steel Corporation a member of that Shafting Association?

A. None that I ever knew as a subsidiary company, or ever thought was such a company.

Q. Take up the Structural agreement now.

I note by the agreement which is in evidence that the Commissioner had power to impose fines where any member of the Association sold under the pool price. During your connection with it was any such fine imposed?

A. Never to my knowledge.

Q. So far as you know that power was never exercised?

A. Never to my knowledge.

Q. Were these associations matters of public knowledge? Was it generally known among the trade that they existed?

A. Yes, it was. The newspaper men knew it; the trade paper men knew it, and many of the brokers, middle men, in the cities knew it.

Q. The market reports of the newspapers used to mention these associations, did they not?

A. Yes. In fact, we had meetings with the brokers, (dealers, we called them), in various cities.

Q. What was the attitude of the jobbers or dealers towards these associations? Did they protest against them or object to their continuance?

MR. DICKINSON: I except to that as irrelevant and incompetent.

A. They seemed to be very favorably inclined to them.

By MR. REED:

Q. Did you hear any statement or statements made by the members of this Structural Steel Pool about the time that the pool was dissolved, to indicate the reason for its dissolution?

MR. DICKINSON: I object to that as irrelevant and incompetent.

A. There were some discussions at a few of the meetings

prior to the dissolution as to whether they should continue or not, or whether it was right to continue or not.

By MR. REED:

Q. When it was decided to dissolve the Structural Association what reason was assigned for its breaking up?

A. Well, as near as I could state that I would say that Colonel Bope—

Q. Of the Carnegie Company?

A. Representing the Carnegie Company, stated that Judge Gary objected to it.

MR. DICKINSON: That is objected to as hearsay.

By MR. REED:

Q. Did he state whether or not Judge Gary had ordered him to withdraw from the Association?

MR. DICKINSON: Excepted to as irrelevant and incompetent.

A. Finally, yes.

By MR. REED:

Q. What reason was given for the breaking up of the Plate Association?

MR. DICKINSON: That is excepted to as hearsay, irrelevant and incompetent?

A. The same thing.

By MR. REED:

Q. This statement that you speak of being made by Colonel Bope was made in the meetings of the association, was it?

A. Yes, sir.

Q. Made publicly, with all of them present?

A. Yes, sir.

Q. After these associations broke up in the latter part of 1904, Mr. Langan, was there any agreement fixing the percentage of the business allowed to each producer?

A. None whatever.

Q. Was there, or was there not, any limitation of output of any kind?

A. Never was any limitation of output.

Q. You spoke of the tax upon the output of the members of the Association in excess of a certified percentage. I wish you would tell us while these associations were in force whether that fact operated to keep down the output?

A. No; I did not think it did. The tax was in my time \$4 a ton and \$2 a ton, and any member who was able to get the business at the price which was then current could make more money by doing all the business he could and paying the tax on what he did over his allotment.

Q. Was that their aim, to produce as much as they could?

A. Some of them seemed to have that aim.

Q. You tell us that tax was discontinued in the latter part of 1904?

A. Yes, sir; everything of that nature was discontinued at that time.

Q. The Commissioner continued to act as the statistician?

A. Yes, sir.

Q. Did he have any other authority or function after that time, in 1904, when the pools were dissolved?

A. None other than to take care of those reports and send out one single report to each member.

Q. And what did those reports that he sent out as statistician include?

A. Well, they practically included everything that was in the reports under the previous conditions, except the percentages.

Q. Then they showed shipments, did they, during the preceding month?

A. They showed in detail, as I recall it, bookings, that is, all the orders they took, and the stuff that they rolled, and the stuff that they sold, and the stuff that they shipped.

Q. Did it show prices?

A. There never was any price in those statements.

Q. It made no statement of percentage?

A. Other than what you could take your lead pencil and figure out, which is all I did on the other reports.

Q. It simply amounted to an interchange of information?

As to orders booked, amount of material rolled, amount of material shipped?

A. Yes.

Q. In these meetings of producers that were held after the pools broke up, you have stated that the producers who were present, would state their intentions as to prices. Was there any assurance given by any of them at those meetings that they would maintain those prices that they mentioned for any specific time?

A. None that I recall.

Q. Was there any promise by any of them who were present at those meetings that they would stick to a fixed price?

A. No.

Q. For any particular period?

A. No; they simply stated that "My price will be so and so."

Q. Did the manufacturers who were present at those later meetings, Mr. Langan, bind themselves to one another to conduct their business in any particular manner or fix their prices at any particular point, or were they left free to do as they pleased?

A. The only understanding I recall at these later meetings was that they would send in reports, and they were then not sworn reports after 1904; they were simply the same form, with the affidavit torn off.

Q. You do not quite catch my question. In the matter of limiting output or fixing prices, did they assume any obligation toward one another after the pool broke up?

A. I think I stated that, but I will answer no.

Q. I want to have it clear.

A. No; they did not.

Q. Was it not generally understood that all of those manufacturers should be free to conduct their business as they pleased?

A. Yes. The best evidence is, that as a rule they did.

Q. I want to call attention to the petition that is filed by the Government in this case. It is in here alleged that merely assembling and mutually exchanging information and declaration of purpose does not amount to an agreement or com-

bination in restraint of trade. Now, at these meetings of manufacturers of plates and of structural material held after these pools broke up, was there anything more done than merely assembling and mutually exchanging information and declaration of purpose?

A. That was stated and understood to be the only purpose, because they had already dissolved on the closer basis that they had previously had, and this was one where they were simply trying to keep in touch with one another.

MR. REED: That is all.

REDIRECT EXAMINATION.

By MR. DICKINSON:

Q. You say, however, that before they parted they generally announced a common price?

A. Each man announced what he was going to sell at, or those who made any announcements announced what they were going to sell at. It was usually the same price.

Q. Each understood that the other was going to sell at that price, unless he violated it?

A. I guess each understood what the others understood. I do not know.

Q. You were there, were you not?

A. I can tell you what I understood.

Q. You were at the meeting, were you not?

A. Yes.

Q. What did you understand?

A. I understood that they were to sell at the prices stated, which was the same price each one stated—which was the same price; I will end it there.

Q. I will ask you whether or not they did not understand that before they would change prices they would notify each other?

A. No, sir.

Q. You did not understand that?

A. No, sir.

Q. There was a general understanding that without notice they would continue to sell at that price, was there?

A. I understood so.

Q. That is what you understood? You heard what was said there?

MR. LINDABURY: I object to the question. It is not what the witness understood, and I object to the inquiry as to what the witness understood.

A. Yes.

By MR. DICKINSON:

Q. Was the object of that tax to increase production among the several members of the association?

A. I think the original object of that tax was to keep them from exceeding what they had been allotted.

Q. And that was what the money was paid in for, was it; that was the purpose of the tax?

A. I was not in the original formation, but I understood that that was the purpose.

Q. It was not to promote unlimited production on the part of the different members of the association, was it?

MR. LINDABURY: Is this expert opinion you are seeking?

MR. DICKINSON: You questioned him about the object of the tax, whether or not it kept down the prices.

MR. LINDABURY: Not what the object was, but what the effect was. This is opinion evidence which you are getting into.

MR. DICKINSON: Read the question.

(The stenographer read the question as follows.)

“Q. It was not to promote unlimited production on the part of the different members of the association, was it?”

A. I could not answer that question.

MR. DICKINSON: That is all.

PERCIVAL ROBERTS, JR.,

called as a witness in behalf of the United States being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Where do you live?

A. I live in Montgomery County, Pennsylvania.

Q. What is your age, Mr. Roberts?

A. 55 years of age.

Q. You are a defendant in this suit, I believe?

A. I am a defendant in the present suit.

Q. In what business were you engaged just prior to the formation of the American Bridge Company?

A. I was president of the A. & P. Roberts Company, which company operated the so-called Pencoyd Iron Works, near Philadelphia.

Q. After the formation of the American Bridge Company did you become an officer, and if so, please state what officer?

A. I became president of the American Bridge Company in the latter part of May, 1900 and continued as president until about May, 1901.

Q. Did you have any further connection with it as an officer or director?

A. Of the American Bridge Company?

Q. Yes.

A. I was a director of the American Bridge Company for a short time, possibly less than a year, subsequent to May, 1901.

Q. After the American Bridge Company was taken over by the United States Steel Corporation, state whether or not you became an officer or director of that corporation and what positions you have held with that corporation from that time down to the present time?

A. I became a director of the United States Steel Corporation in the spring of 1901; whether prior to or subsequent to the taking over of the American Bridge Company or the exchange of the securities of the American Bridge Company for the securities of the United States Steel Corporation I am unable at this time to state. I was a member of the Executive

Committee of the Board of Directors of the United States Steel Corporation and a director of that Corporation until the spring of 1902 when I resigned from the two positions.

I became a director, again, of the United States Steel Corporation, in the year 1909, the latter part of the year, I think, and I became a member of the Finance Committee of the same Corporation in the early part of the year 1911. I am at this time a director and member of the Finance Committee.

Q. Were you a stockholder in the American Bridge Company?

A. I was a stockholder in the American Bridge Company.

Q. Without asking you the amount of your holdings, was it a substantial amount?

A. I do not recall the exact amount at this time. My holdings came to me as part of the proceeds of the sale of my interest in the securities of the A. & P. Roberts Company to the American Bridge Company.

Q. Are you a stockholder in the United States Steel Corporation?

A. At this time?

Q. Yes.

A. I am.

Q. Did you become so at the time it took over the American Bridge Company?

A. At the time the securities of the American Bridge Company were exchanged for those of the United States Steel Corporation I exchanged my Bridge Company securities for those of the Corporation. Subsequently, upon my retirement from the United States Steel Corporation, I sold my securities and those that I now hold I have purchased since I again became a director.

Q. I did not ask you what you were now holding.

A. I did not state—

MR. DICKINSON: Read the question, please.

(The stenographer read as follows:)

“Q. Are you a stockholder in the United States Steel Corporation?

“A. At this time?

“Q. Yes.

“A. I am.

“Q. Did you become so at the time it took over the American Bridge Company?”

A. You refer now to my present holdings?

By MR. DICKINSON:

Q. No; I am asking if you became one at that time. I think you have already answered the question.

A. I did, and said that I had disposed of my holdings upon my retirement from the Board of Directors of the United States Steel Corporation.

Q. I did not ask you about the disposition of your securities; I merely asked you as to the fact of whether or not you became a stockholder at that time; then at the time the Corporation took over the American Bridge Company you exchanged your holdings in the American Bridge Company for stock in the United States Steel Corporation?

A. That is correct.

Q. Did you take part in the negotiations for the transfer of the stock of the American Bridge Company to the United States Steel Corporation?

A. None whatever beyond exchanging my own securities.

Q. Who represented the American Bridge Company in those negotiations?

A. There never were any.

Q. The stock was purchased, was it not?

A. My recollection is that a circular was issued by the bankers, Messrs. J. P. Morgan & Company, offering to give in exchange for securities in the American Bridge Company securities of the United States Steel Corporation. There was no corporate action at any time taken on the part of the American Bridge Company in the matter.

Q. You mean to say that the first you heard of the transaction was an announcement by J. P. Morgan & Company of their proposal?

A. Officially, yes.

Q. What do you mean by officially?

A. Exactly what I say.

Q. I will ask you, then, individually when was the first you heard of it?

A. Individually I personally had been told that such an exchange was to take place.

Q. How long before that announcement?

A. A short time; probably a week or two.

Q. Were there no negotiations with any persons representing the stockholders of the American Bridge Company and the United States Steel Corporation as to prices or whether or not the stock would be sold, previous to that announcement of J. P. Morgan & Company.

A. I was President of the American Bridge Company at that time, and I knew of no interviews or no interchange of opinion of any kind in the matter. The circular was issued directly to the stockholders; it did not come before the Board of Directors for any official action; nor had the Board of Directors, so far as I know, any knowledge of the matter whatever.

Q. Do you mean to say by that, Mr. Roberts, that J. P. Morgan & Company issued a proposition to buy the stock of these stockholders of the American Bridge Company without any previous negotiations between Morgan & Company and you or any other person representing these stockholders, as to whether they would sell, and as to what the price would be?

A. That is positively what I mean to say. What is more, it was not a purchase of stock; it was an exchange of one corporation's stock for that of another.

Q. That is a form of purchase?

A. It was a matter which did not necessarily come within the province of the Board of Directors of the American Bridge Company or of any of its officers.

Q. Had any negotiations taken place, to your knowledge, by any of the individual stockholders of the American Bridge Company, representing their own interests, with the Carnegie Company or any representatives of the United States Steel Corporation, for the sale of their stock or exchange of their stock to the United States Steel Corporation previous to that announcement I have spoken of as having been made by Morgan & Company?

A. I have no knowledge of any such, nor do I believe that any such took place.

Q. Had you not talked with any person representing Mor-

gan & Company about the sale of your stock, before that announcement?

A. The sale of my personal holdings?

Q. Yes.

A. I did not.

Q. Nor with any person representing the United States Steel Corporation?

A. I did not.

Q. Was the first knowledge that you had of the desire of the United States Steel Corporation to exchange its stock with the individual stockholders of the American Bridge Company the publication that you have referred to as having been made by Morgan & Company?

A. No.

Q. What was your first knowledge?

A. The first knowledge I had was an interview which I had, I think, with Mr. Robert Bacon in the offices of Messrs J. P. Morgan & Company, and at that interview he told me that the United States Steel Corporation, which had already been organized, was proposing to exchange its securities for the securities of the American Bridge Company.

Q. Who was Mr. Robert Bacon?

MR. LINDABURY: Has the witness finished his answer?

MR. DICKINSON: Have you finished your answer?

The WITNESS: Substantially so, I think. Mr. Robert Bacon was a member of the firm of Messrs. J. P. Morgan & Company.

By MR. DICKINSON:

Q. When did you have that interview with Mr. Robert Bacon? Was it before or after this publication of the printed proposal sent out by Morgan & Company?

A. Possibly a week before.

Q. What transpired between you and Mr. Bacon?

A. As far as I can recollect, Mr. Bacon stated to me what I have just stated, and asked me if I would be willing to become a director of the United States Steel Corporation, to which I replied that I would. As far as I recollect, that was the only subject of the interview.

Q. Had you, then, agreed to sell your stock?

A. No.

Q. Then, before you agreed to sell your stock or exchange your stock in the American Bridge Company for stock in the United States Steel Corporation, you had agreed to become a director in that corporation?

A. I had.

Q. Was that to take place after the transfer of the American Bridge Company?

A. I do not think any time was specified. As a matter of fact, I am quite certain I became a director of the United States Steel Corporation prior to the taking over of the American Bridge Company.

Q. What do you mean by the "taking over of the American Bridge Company?" Do you mean the actual taking over?

A. Exchange of stocks.

Q. Did you become a director in the United States Steel Corporation prior to the consummation of the agreement to exchange the stock?

A. No, no.

Q. In 1898, and the several years next preceding that year, state whether or not the Pencoyd Works had a steel department and what was their capacity in gross tons of ingots per year?

A. The Pencoyd Iron Works was established in the year 1852 for the manufacture of wrought iron. Subsequently it engaged in the manufacture of steel—and as of what date?

Q. From 1899 and the two years previous thereto. That would be 1897 to 1899 inclusive?

A. And as of the period between 1897 and 1899, it had a capacity of about something over 200,000 tons of open hearth steel ingots per annum; and, in addition, a structural plant with a capacity of some 65,000 to 70,000 tons of fabricated structural work per annum.

Q. Did it make what is known as bridge work?

A. All types of frame structures, composed principally of wrought iron or steel.

Q. Channel bars, from two to fifteen inches?

A. That is another department. That is the raw, rolled material, from which structures are fabricated. It made

channels, beams, angles, T's, and the usual assortment of structural shapes.

Q. Deck beams?

A. Also bars, some sizes of plates, deck beams—

Q. Axles?

A. Axles.

Q. Bridge steel?

A. Bridge steel would be comprised in what I have already enumerated.

Q. Shafting?

A. Yes.

Q. Steel blooms?

A. Steel blooms; but to a very limited extent, and only when there was insufficient demand for a more highly finished form of product.

Q. I will ask you whether or not your specialties were structural shapes, axles, bar and bridge steel?

A. That is correct.

Q. Did you brand your work? If so, how did you brand it; did you have a brand?

A. In the early days it was customary to either roll into your material, or stamp with a stamp words, for instance in the case of our product, some of it was marked "Pencoyd," and the Carnegie Company's was marked "Carnegie," and so on; but there was no brand in the sense of a trade mark.

Q. At the time of the formation of the United States Steel Corporation state whether or not the Carnegie Steel Company and the Pencoyd Works were competitors in interstate commerce, and, if so, in what respect.

A. At the time of the formation of the United States Steel Corporation?

Q. Yes.

A. I would answer no, for the reason that the product of the Pencoyd works at that time was absorbed practically entirely by the shops of the American Bridge Company, which company also purchased a part of their supplies from the Carnegie Steel Company, but I could hardly consider that they were competitors.

Q. At the time that the American Bridge Company was taken over by the United States Steel Corporation, state

whether or not the Carnegie Steel Company and the Pencoyd Works were competitors?

MR. LINDABURY: I think he just answered that question.

(Upon request the stenographer read the previous question as follows:)

“Q. At the time of the formation of the United States Steel Corporation state whether or not the Carnegie Steel Company and the Pencoyd Works were competitors in Interstate Commerce, and, if so, in what respect.”

MR. LINDABURY: That seems to be the same question that you have just put.

MR. DICKINSON: There is a difference in time.

MR. LINDABURY: If you meant that to be a different question, all right.

MR. DICKINSON: I thought there was a difference in the questions.

MR. LINDABURY: I thought it was a mistake on your part. The difference is merely that of about a month, is it not?

THE WITNESS: You speak now of two periods—the time of the formation of the United States Steel Corporation, and also the taking over of the American Bridge Company?

MR. LINDABURY: That is the difference, yes.

By MR. DICKINSON:

Q. Yes. Answer the last question.

A. The situation would be practically the same at both times mentioned.

Q. At the time that the Pencoyd Works were taken over by the American Bridge Company, state whether or not there was competition between the Carnegie Steel Company and the Pencoyd Works?

A. There was.

Q. In what respect?

A. They made—

Q. You say “they.” Whom do you mean by “they”?

A. The Carnegie Steel Company and the Pencoyd Iron Works both made certain lines of products which were common to both.

Q. State what they were?

A. They were makers of structural material, such as beams, channels, angles, etc.; also axles, certain sizes of bars, and were also competitors in the manufacture of fabricated structures. They competed to the extent that they had a common territory into which the cost of transportation permitted them to enter. They were not wholly competitors; nor did they wholly reach a common market.

Q. Was this competition in interstate commerce outside of the State of Pennsylvania?

A. They both shipped outside of the State of Pennsylvania.

Q. And sold in common markets outside the State of Pennsylvania, to the extent that you have described?

A. They did.

Q. In what parts of the United States, at that time were you selling your products, such as were made by the Carnegie Company?

A. I cannot answer that definitely.

Q. Answer it as well as you can, please, Mr. Roberts.

A. Our markets extended in that time from Egypt and South Africa into Asia and into every State and Territory of the United States; but not at all times under similar conditions. We might today be able to ship bridges to Egypt, while tomorrow we would be unable to do so. I cannot cover that competition definitely over any extended period of time.

Q. Referring to what you have said as to your territory of sale and the shipments you made, state whether or not that applied to the Carnegie Company too?

A. I can only speak for my own company; I cannot speak for the Carnegie Company.

Q. Can you say whether or not you met the Carnegie Company in competition outside of the State of Pennsylvania?

A. We did from time to time, but not at all times.

Q. Did you in various parts of the United States from time to time meet them in competition?

A. We did.

Q. In the articles you have named?

A. We did.

MR. LINDABURY: I do not believe he means in all the articles.

By MR. DICKINSON:

Q. The articles they produced in common?

A. Common to both, I mean. My understanding of your question was that you asked me what products were common to both concerns, the Carnegie and the Pencoyd and I first defined their rolling mill products, that is, the products of the steel works, and also the fabricated products, or the products of their bridge plants. The Carnegie Company at that time was operating the Keystone Bridge Company at Pittsburg, and, of course, we met them in competition from time to time both in rolling mill products and in fabricated structures. Of course the market for fabricated structures was a wider one than the market for rolling mill materials.

Q. The rolling mill material was sold in interstate commerce, was it not, in competition?

A. Oh, yes, undoubtedly.

Q. Mr. Roberts, without my putting a series of questions, please state whether or not the Pencoyd works was at that time a competitor of the Illinois Steel Company in interstate commerce, and, if so, in what respects?

A. At what time was that?

Q. Just before the formation of the Bridge Company and the years shortly previous thereto.

A. To such a limited extent that it would practically be inappreciable.

Q. What did the Illinois Steel Company make that you make?

A. At the time you speak of I think they made a very limited line of structural material, such as angles, and did some small amount of fabricated work; but it was consumed largely locally. And I might say that practically we never met them in competition. I think it was under the name of the Universal Construction Company that they operated at that time.

Q. Yes. Did they make bridge material?

A. Do you mean the rolled material or the fabricated?

Q. Well, rolled material, and then material used in building structures.

A. They made their rolled structures to a limited extent only, and purchased the balance from other steel makers. Their structural works, as my remembrance serves me, was mostly in building work, as distinguished from bridge work. I think they did little bridge work, if any.

Q. State whether or not they did any bridge work and structural work outside of the State of Illinois?

A. I am unable to answer that question.

Q. How about the Cleveland rolling mill of the American Steel & Wire Company right after it went into the American Steel & Wire Company? The Cleveland Rolling Mill just prior to the formation of the American Bridge Company?

A. I never knew them as a competitor.

Q. Do you know what they produced?

A. I do not.

Q. Did your company have sales offices in New York, Chicago and St. Louis?

A. Which company?

Q. The Pencoyd.

A. At what time?

Q. Prior to its being taken over by the American Bridge Company?

A. In what cities?

Q. New York, Chicago and St. Louis.

A. They had sales offices in New York up to the year 1900; we had at various times prior to 1900 agents representing us in the city of Chicago, but I do not recall any connections in St. Louis.

Q. Mr. Roberts, prior to the year 1900 state whether or not there were periods of pools and agreements existing between such concerns as the Pencoyd and others making similar products in the United States say in 1900 and a short time prior thereto?

A. Many years prior to 1900, from time to time there were various associations of manufacturers formed, more or less of the nature of profit-sharing schemes.

Q. And arrangements for fixing prices from time to time?

A. Yes; there were agreements as to prices at which material would be sold.

Q. Were these agreements always kept, or were they broken from time to time?

A. Like all agreements, sometimes kept; sometimes broken.

Q. Were they constantly effective in controlling or steadying prices, or were they not?

A. They were usually the result of destructive competition which had reduced selling prices to below the cost of manufacture. When such situations developed from time to time, agreements were entered into to enable producer to obtain a reasonable return over and above the cost of production. As the market improved from time to time and consumption overtook production, these agreements usually failed or became of little value.

Q. They would get together from time to time, would they, and then break up again?

A. Agreements were usually the creation of depressed conditions, and they served their purpose, and in many cases died a natural death.

Q. And sometimes were they ineffective?

A. No; I think they were reasonably efficient.

Q. Would not members come together from time to time and continue for a while and then the agreements break up on account of members breaking faith with the others?

A. No.

Q. And would there not be war?

A. No; I think not. There may have been some instances of that character. There were instances of a condition such as I have just stated.

Q. What do you mean by the expression or understand by the expression "an unstable equilibrium"? I call your attention in that connection to the Stanley Hearings, page 323, where you are reported as saying:

"When it came to the point they felt they could no longer continue it, they came together and formed some temporary arrangement by which prices would be restored, which lasted probably a few years until some one made an unstable equilibrium, and then the matter was thrown open again until they came to such a condition of suffering that they renewed it. It was a case of coming together and breaking up again."

What do you mean by "state of unstable equilibrium," or some one "making a state of unstable equilibrium?"

A. Well, in physics, an unstable equilibrium would mean something that was topheavy.

Q. Pardon me, Mr. Roberts. I do not mean to go into a dissertation on physics. I was just asking you what you meant by that language, if you used that language.

A. I used that language, and I am trying to tell you what I meant.

Q. All right. Take your own way about it.

A. The agreements in certain instances became topheavy, and becoming topheavy there was unstable equilibrium produced, and the agreements fell apart of their own weight.

Q. What do you mean by "topheavy?"

A. An unstable equilibrium.

Q. Well, an unstable equilibrium means topheavy, and topheavy means an unstable equilibrium?

A. Practically they are correlative expressions.

Q. As applied to these agreements and the breaking apart, just state what element entered to make an unstable equilibrium.

A. These agreements could not continue in effect unless there was a stable equilibrium. An unstable equilibrium might be produced by a consumption which was too great for the production, or it might occur through the indifference of certain parties to the agreement, or being dissatisfied with the terms into which they had entered. As long as the equilibrium remained stable, they continued together, but when it did not, they separated. That was the meaning of what I said before the Stanley Committee. I think you are reading from my testimony there.

Q. Yes; I so stated.

MR. LINDABURY: Will you give the reference to his testimony?

MR. DICKINSON: Page 323.

MR. LINDABURY: No; the volume.

MR. DICKINSON: Volume six.

By MR. DICKINSON :

Q. If the parties agreed to maintain a certain price, and one of the parties sold below that price and it came to the knowledge of the others, would that bring about an unstable equilibrium?

A. No.

Q. What would it bring about?

A. It would not produce any results. Those unstable equilibriums to which I referred were usually a result of changed conditions which no longer seemed to make fair the allotted percentages of the total output. I know of no instances of the breaking up of any of those agreements due to the non-maintenance of the price. The important part in all of them was that feature of a profit-sharing scheme by which the several parties in interest divided pro rata their profits over and above their allotted percentages. In other words, to a certain extent an insurance fund that up to their several percentages they would be secured in their entire profits. I never knew an agreement to fail from the cutting of prices alone.

Q. Did you know whether or not there were pools entered into for the purpose of fixing and controlling prices among the members of those pools?

A. The agreement of the association was one thing and the arranging of prices was another separate agreement. They were not the same agreement and were not contingent one on the other.

Q. Are you speaking of any particular association?

A. I am speaking of the Structural Association.

Q. I am not speaking of that.

A. I understood that was the one you were speaking of.

Q. No; I am speaking generally, as to whether or not prior to 1900 there were pooling arrangements entered into from time to time for the purpose of controlling prices.

A. From my own personal experience and knowledge I have no definite knowledge of any of those agreements other than the Structural Association.

Q. And your answers then hitherto were intended to apply to the Structural Association, were they?

A. The Structural Association I was speaking of.

Q. You misunderstood me. I was asking generally and your mind was on a particular matter.

A. I thought you wanted my own personal experience as an expert?

Q. I wanted to ask you generally about the matter.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

At the expiration of the recess the hearing was resumed.

PERCIVAL ROBERTS, JR.,

the witness on the stand at the taking of the recess, resumed the stand for further

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Mr. Roberts, state whether or not you were at meetings of the Executive Committee of the United States Steel Corporation May 6 and May 13, 1901, at which a proposal was brought up to combine the people outside of the American Bridge Company who were engaged in the United States in building bridges and large structures?

A. The record will have to show. I have no recollection at this time whether I was present or not.

MR. DICKINSON: I want to use here, Mr. Lindabury, an extract from the minutes which I have already furnished you.

MR. LINDABURY: Yes.

MR. DICKINSON: And to question him about it.

MR. LINDABURY: We have gone far enough with those, Judge, to ascertain that those excerpts are substantially correct. There are some errors. We are going through all of the minutes to see what, if anything, in addition, we want to add.

MR. DICKINSON: I desire now to use this the same as if it were here.

MR. LINDABURY: That is all right. I find, Judge, that none of the headlines in that report are in the minutes.

MR. DICKINSON: Of course they would have to be omitted, then.

MR. LINDABURY: Yes.

By MR. DICKINSON:

Q. I will read you a copy of an extract from the minutes of May 6, 1901, showing that there were present Mr. Gary, (Chairman), Mr. Schwab, Mr. Roberts, Mr. Edenborn, Mr. Reid and Mr. Converse, and the following:

“The President stated that a Mr. Conger had a scheme by which it was proposed to combine everything outside of the American Bridge Company into one company. The President believed that such a combination of the different elements would work out well with the American Bridge Company, inasmuch as there would then be one interest to deal with instead of a number, with the consequent conflicting interests as to policy, etc. The question was not fully discussed, and laid over for a future meeting.”

I read now an extract from May 13, 1901, showing present: Mr. Gary, (Chairman), Mr. Schwab, Mr. Roberts, Mr. Edenborn, Mr. Reid and Mr. Converse; the extract being:

“Mr. Roberts reported that he also has received a letter from Mr. Conger on the plan previously referred to this committee. Upon the recommendation of Mr. Roberts it was voted that no answer be made to Mr. Conger. The President inquired if there would be any advantages to the American Bridge Company if the proposed consolidation were effected. Mr. Roberts stated that as the small concerns are now, they do not amount to much in a competitive way, but is afraid they would become factors if consolidated.”

Did those things occur at those meetings, and did you make that statement?

A. I recall generally the situation to which those minutes refer, yes.

As reported they do not quite correctly represent the proposition made by Mr. Conger.

Q. I will get to that a little later, Mr. Roberts. I am asking you now if you recall those meetings?

A. I recall the substance of those meetings.

Q. And, as far as they go, are they correct or not?

A. Not entirely.

Q. In what respect are they not correct?

A. They are not verbatim minutes. They are simply a memorandum of the discussion which took place, and they are, therefore, the opinion as to those matters of the man acting as secretary. They were not the minutes of the meeting. They were simply a diary.

Q. Are the statements that are made there true or false, as far as they go?

A. They are not true in respect to the fact that it was to be a combination of all bridge companies outside of the American Bridge Company. That was not correct.

Q. Is it correct as to your being present?

A. It is correct as to my being present.

Q. And as to Mr. Gary and Mr. Schwab and Mr. Edensborn and Mr. Reid and Mr. Converse being present?

A. I think those are matters of fact in regard to which there can be no question of doubt.

Q. You have specified some particulars where they do not fully set forth or correctly set forth what you think occurred. Now specify any further particulars in which they are incorrect, if any?

MR. LINDABURY: I object. I think the only proper question is what took place. He is your witness, Judge.

MR. DICKINSON: No; I am asking now about whether the things took place as recited by the minutes.

MR. LINDABURY: He says that the report is not accurate. Why not let him tell just what the proposition was?

MR. DICKINSON: I will get to that, but I am asking him now something different. He has specified some respects in which he thinks the minutes are inaccurate or inadequate. I want him now to specify fully on that point, and then I will come to the other matter.

A. That, I think, I have already done.

The principal matter of inaccuracy is that it was a proposition brought by Mr. Conger, and, as I recall the one that he wrote me about it was not a combination of all the outside

bridge building plants, but embraced a number of the smaller independent highway concerns, principally located in the east.

By MR. DICKINSON :

Q. I will ask you to explain what was involved in Mr. Conger's proposition, and what the United States Steel Corporation had to do with it; how it concerned it?

A. My recollection is that the matter was turned down without any further consideration, as not being a subject of any interest to the Steel Corporation, and that no action whatever was taken in regard to it. We had various propositions of that kind coming before us at that time, as I recollect, continuously, and they were simply reported to the committee, who took no action, nor even replied.

MR. LINDABURY: You have overlooked, Mr. Roberts, a part of the question; which was as to what the proposition was.

(By request the reporter repeated the question as follows:)

“Q. I will ask you to explain what was involved in Mr. Conger's proposition and what the United States Steel Corporation had to do with it; how it concerned it.”

MR. LINDABURY: I suppose, Judge, you meant by “what was involved” what the proposition was?

MR. DICKINSON: Yes.

THE WITNESS: As I recall, it was a proposition on Mr. Conger's part to form a number of small independent concerns into one company, thereby giving them greater strength than they would have as independent concerns. In other words, an increase of capital would enable them to become more active in their several lines than they were then. The matter was of so little interest that it was not considered at the time, and, as far as I recall, no action whatever was taken in regard to it.

By MR. DICKINSON :

Q. What concerns did Mr. Conger propose?

A. I have no idea; I have no recollection.

Q. Did you know at that time?

A. At that time I think I must have known. I have no recollection now as to which ones they were.

Q. Could you name any of them now?

A. No, I could not.

Q. You do not know where they were located?

A. No, sir.

Q. You could not give the capacities of any of them, could you?

A. No, sir; I could not.

Q. Mr. Roberts, I will read to you from the minutes of the American Bridge Company of May 10, 1900, to the effect that the president reported to the board that Mr. Ladd had stated that he found himself unable to deliver and convey, or cause to be delivered and conveyed to the American Bridge Company certain of the plants, works and properties by him agreed to be sold and transferred under his agreement with the American Bridge Company dated May 4, 1900, namely, the plants, works and properties of the Bellfontaine Bridge Company, the Canton Bridge Company, the Chicago Bridge Company, the J. B. and J. M. Cornell, King Bridge Company, New Jersey Steel & Iron Company, Passaic Rolling Mill Company, Penn Bridge Company, Toledo Bridge Company and Wisconsin Bridge & Iron Company.

Q. State whether or not in the formation of the American Bridge Company the plan originally contemplated taking in those companies, besides the ones you did take in?

A. I have no knowledge of any transactions of the American Bridge Company at the time you refer to as it is prior to the date of my connection with that company.

Q. When did your connection with that company begin?

A. May 21, 1900.

Q. Your company went into that organization, did it not?

A. The securities of the A. & P. Roberts Company were sold to I. Gifford Ladd, and the Pencoyd Iron Works afterwards—the securities of the A. & P. Roberts afterwards were owned by the American Bridge Company, it remaining an independent, so far as the organization was concerned, an independent corporation.

Q. You say the securities were sold to Mr. Ladd?

A. They were sold to I. Gifford Ladd.

Q. At what time?

A. I think about May 1, 1900.

Q. Were they sold straight out to him?

A. Absolutely, for cash.

Q. What did he have? An option on them?

A. Absolutely sold for cash and securities.

Q. And securities?

A. Cash and securities.

Q. What kind of securities?

A. Stocks of the American Bridge Company.

Q. Then, at the time of the sale you knew you were going to get stock in the American Bridge Company?

A. At the time of the sale to I. Gifford Ladd?

Q. Yes.

A. That was part of the consideration.

Q. You were taking, as part of the consideration, stock in the American Bridge Company?

A. Correct.

Q. Did you or did you not know what companies it was then contemplated were to be taken over by the American Bridge Company, whose values would form the foundation upon which the value of that stock would rest?

A. I think so; yes.

Q. I will ask you whether or not at that time you understood the American Bridge Company would take over in that combination the Bellfontaine Bridge Company.

A. I do not at this time recall. My recollection is that I only knew of the list of companies which were actually taken over by the American Bridge Company at that time. I have no recollection of any which were not.

Q. Were you furnished with a list?

A. I think I was.

Q. By whom?

A. By Mr. Ladd, I think.

Q. When?

A. At the time of the proposed purchase of the securities of the A. & P. Roberts Company.

Q. When was that?

A. About May 1, 1900. I am not sure, however, of the exact date, but it was——

Q. Have you got that list?

A. No, sir.

A. What did you do with it?

A. I have not the faintest idea. I do not know that there ever was a list. He may have told me.

Q. Do you mean to say that you agreed to take stock in a new company, which was to take over certain properties, the value of which would be the foundation of the valuation of that stock, just upon a mere verbal statement of what was going into that company?

A. I think that was the basis of the transaction; yes, sir.

Q. Did you not know anything at that time, or have any information, as to whether the Canton Bridge Company would be taken into that combination?

A. I do not recall at this time; no.

Q. How about the Chicago Bridge Company?

A. I cannot recall.

Q. The King Bridge Company?

A. I would answer the same; I do not recall.

Q. The J. B. & J. M. Cornell?

A. I do not recall.

Q. The New Jersey Steel & Iron Company?

A. The New Jersey Steel & Iron Company was one of the properties purchased by the American Bridge Company.

Q. Then you did understand, at that time, that the New Jersey Steel & Iron Company would be taken in?

A. I must have, because that was one of the concerns.

Q. How about the Paassaic Rolling Mills?

A. I never knew that that was to be.

Q. The Toledo Bridge Company?

A. The Toledo Bridge Company became a part of the American Bridge Company later.

Q. And the Wisconsin Bridge & Iron Company?

A. I do not recall.

Q. When the transaction was made under which the stock of your company was turned over to the American Bridge Company, was there a written agreement between the Amer-

ican Bridge Company and either the holders of stock of your company or Mr. Ladd?

A. My remembrance is that Mr. I. Gifford Ladd asked me whether I was in a position to name him——

MR. LINDABURY: You missed the question, I think. Did he not, Judge?

MR. DICKINSON: Yes. I think he has missed several.

(The question was repeated by the stenographer, as follows:)

“Q. When the transaction was made under which the stock of your company was turned over to the American Bridge Company, was there a written agreement between the American Bridge Company and either the holders of stock of your company or Mr. Ladd?”

A. I did not know the American Bridge Company in the matter, in the sale of the securities of the A. & P. Roberts Company, I only knew Mr. Ladd. There was, I think—although I do not know whether it is now in existence—a proposition from me to Mr. I. Gifford Ladd to sell all the stocks and bonds of the A. & P. Roberts Company to him for a certain consideration. That proposition was later accepted by Messrs. J. P. Morgan & Company on behalf of Mr. Ladd.

By MR. DICKINSON:

Q. I will ask you whether or not the agreement you had with Mr. Ladd, or the proposal from him to you or you to him, whichever constituted it, which was accepted by Morgan & Company, involved a provision in substance as follows: That the persons selling the stock in your company would not during some period, directly or indirectly, without the consent in writing of the Bridge Company, engage or be interested in the business of bridge building or manufacturing or selling structural iron and steel, either individually or as co-partners in any firm, as agents for others, or as officers, directors or stockholders of any corporation or association other than the Bridge Company or its successors in any State, District or Territory of the United States, or its possessions, except the Territory of New Mexico?

A. There was absolutely no agreement of any kind beyond naming a sum of money at which the securities would be sold. In that transaction I represented solely the stockholders of the A. & P. Roberts Company.

Q. Did you have any written agreement with Ladd for the sale of those stocks?

A. Nothing except my proposal, which was accepted on Ladd's behalf by J. P. Morgan & Company.

Q. Was that in writing?

A. I do not think it was accepted in writing. The proposal naming the price at which the securities would be sold was in writing. I think the acceptance was made verbally by Charles Steele, in the office of Drexel & Company, in Philadelphia.

Q. Have you a copy of your written proposal?

A. I do not think I have.

Q. Did you keep a copy of it?

A. There may have been a copy filed at that time, but I have had no occasion to look it up since then, and I have not looked it up to see whether there was a copy made.

Q. Will you look and search among your papers and see whether there is a copy?

A. Yes.

Q. And if so, please produce it and I will recall and examine you about it.

A. Very well.

Q. I will ask you whether or not Ladd in turning over properties and securities to the American Bridge Company entered into a contract with the American Bridge Company containing substantially a provision like that which I have just recited to you?

MR. LINDABURY: Do you read from any page that we can refer to?

MR. DICKINSON: I am not now reading from any page, but the page I read from a moment ago was page 4171 of MacRae's report.

(Upon request the stenographer repeated the question as above recorded.)

A. I have no knowledge of any agreements between Mr.

Ladd and the companies turned over to the American Bridge Company other than such obligations as may have been acquired on the part of the Bridge Company.

By MR. DICKINSON :

Q. I am asking you not about the agreement between Ladd and those several companies, but whether or not there was an agreement entered into between Ladd and the Bridge Company which contained a provision substantially like the one I quoted to you above.

A. I have no recollection of any such, and if there is such a one it will have to speak for itself. I do not recall it.

Q. You became the president of the American Bridge Company?

A. I did.

Q. Were you or not cognizant of its affairs at that time, and the properties acquired?

A. I was.

Q. And the terms and conditions under which it acquired them?

A. Not altogether, no. The transaction was a completed whole at that time, and I assumed the presidency of that company with its obligations as they then existed. I did not look into the details of the contracts between Ladd and the properties which he purchased, unless there was reason to do so on behalf of some obligation on the part of the Bridge Company. I do not recall that at any time there was ever any occasion to know or to exercise any such rights as you refer to. As to whether such agreements exist I am not at this time prepared to say.

MR. DICKINSON: I am now going to read from page 4184, Mr. Lindabury.

By MR. DICKINSON :

Q. I will ask you whether or not you were present at a meeting of the American Bridge Company January 21, 1904, or whether, if you were not present, you knew that a transaction occurred substantially as follows:

“In view of the contract to be made between Post & Mc-

Cord and the American Bridge Co. of New York, the said McCord is relieved of his obligations and disabilities under agreement with the company as of April 30, 1900.

“Resolved, That the company relieve William H. McCord from his obligations and disabilities incurred under his agreement with the company as of April 30, 1900, in so far as to consent to his having become an incorporator, stockholder and officer of the said Post & McCord (Inc.) and to consent to his remaining a stockholder and officer of the said Post & McCord (Inc.), doing such other acts as shall be necessary for the carrying out of the contract to be made between the said Post & McCord (Inc.) and the American Bridge Co. of New York, or any modifications for renewal thereof, etc.”

A. I have no knowledge of the transaction to which you refer, as at both those periods I had no connection whatever with the American Bridge Company.

Q. Mr. Roberts, did you have no knowledge whatever of any contracts between the American Bridge Company and Ladd or the American Bridge Company or any other persons, by which as a part of the transaction under which the American Bridge Company acquired the stock or control of properties of the several companies which were combined in the Bridge Company at the time of its formation, under which the sellers of those stocks or those who had been officers of the corporation that those stocks represented agreed that they would not for a period of twenty years enter into the respective character of business which had been carried on by the several companies in which that stock had been held?

Do you understand that question?

A. I think I do, sir.

Q. Answer it, please.

A. I cannot either affirm or deny that such contracts existed with Ladd or were assigned by Ladd to the American Bridge Company. During my connection with the Bridge Company I never had any reason to discover whether any such contracts were in existence. I do recall, however, that during my connection with the company at least one man who

was an officer of the Bridge Company, and retired from it, re-entered the bridge business immediately.

Q. Was or was not that by the consent of the American Bridge Company?

A. The question was not raised.

Q. Then, you do not know whether he violated the agreement or not?

A. So far as I was concerned, I should have considered such agreements not worth the paper they were written on.

Q. That is not responsive to my question. Repeat the question. Read it to the witness.

(The stenographer repeated the question.)

A. I was only giving a reason why possibly I had not gone deeper into the matter of whether such contracts did exist. But as to whether they did or not it is impossible for me at this time to say.

MR. DICKINSON: (To the stenographer.) Repeat the question.

(The question was read by the stenographer, as follows:)

“Q. Then, you do not know whether he violated the agreement or not?”

A. I do not.

By MR. DICKINSON:

Q. Did you or not, at the time you agreed to sell your stock in the Pencoyd Company and take as a part consideration for that stock in this proposed American Bridge Company, know that the contracts under which other properties were to be acquired required that any parties should desist for any period of time from carrying on the business of those several companies?

A. I had no knowledge of the matter whatever at the time I sold the securities of the A. & P. Roberts Company.

Q. If that entered in as an element of the value on which you say you exchanged your stock, you say you did not know it at that time?

A. I had no knowledge of it whatever.

Q. Mr. Roberts, do you know anything about a contract with the Carnegie Steel Company, entered into by the American Bridge Company shortly after its formation, whereby the Carnegie Steel Company agreed not to manufacture or sell any bridges, viaducts, elevated railroads, stations, or any structural material during the life of that contract?

A. I recall such a contract, yes. As to the contents of it, I would refer to the contract.

Q. I will read you from page 4172 of the hearings before the Stanley Committee, which purports to be such a contract, and ask you whether or not there was such a contract:

“This agreement, made this 30th day of April, 1900, by and between American Bridge Co., a corporation organized under the laws of the State of New Jersey, hereinafter referred to as the bridge company, and Carnegie Steel Company, a corporation organized under the laws of the State of Pennsylvania, hereinafter referred to as the Steel Company.

“Now this agreement witnesseth that the bridge company, in consideration of the covenants hereinafter contained to be kept generally and performed by the steel company, hereby agrees with the said steel company, its successors and assigns:

“That for and during a period of ten years from the date hereof the bridge company will purchase from the steel company, and does now hereby agree to purchase, receive and pay for at Pittsburgh, Pa., not less than 51 per cent. of all rolled shapes of steel and not less than 75 per cent. of all steel plates and bars required in the business of said bridge company at all its works during said period of ten years. The said steel shall be used in the manufacture of bridges, viaducts, elevated railroads, station sheds, and work of like character, and shall not be resold by the said bridge company without having undergone some process of manufacture at its works.

“The prices to be paid for each class of material shall be the prevailing market prices thereof, to be agreed upon in writing monthly between the 15th and 25th days of the preceding month, the said prices to apply on all orders and speci-

fications filed by the bridge company with the steel company during said month for which prices are so fixed.

“The terms of sale of the steel material purchased under this agreement shall be monthly settlements in cash on the 20th of each month for the preceding month’s shipments.

“In consideration of the undertaking by the bridge company to purchase steel as hereinbefore set out and of the further covenants herein contained, to be kept, done, and performed by the bridge company, the steel company hereby agrees with said bridge company, its successors and assigns:

“That the steel company agrees to sell and will manufacture and deliver, on orders and specifications to be furnished by the bridge company, plates, angles, beams, channels, and other forms of rolled steel required in the business of the bridge company as set forth hereinbefore, provided the same be the products of the works of said steel company.

“That during the life of this contract and during the fulfilment of the covenants of said bridge company herein contained the steel company will not manufacture or sell any bridges, viaducts, elevated railroads or station sheds, or any steel material.

“It is further mutually agreed as follows:

“Should the bridge company not make two-thirds of all the bridges, viaducts, elevated railroads, station sheds, and similar works erected in the United States, then shall the steel company, if it so elect, have the full right, privilege and option of again engaging in the bridge business, after one year’s written notice served upon said bridge company at its general office and at the expiration of said year this agreement shall terminate.

“All matters in connection with this agreement upon which difference of opinion may hereafter exist, whether as to prices of materials or rights and obligations under this agreement, shall, failing amicable adjustment within two weeks, be determined by arbitration of three arbitrators, one to be selected by each of the parties hereto and the third to be appointed by the arbitrators so selected and the decision of the said arbitrators or of a majority of them shall be final and conclusive.

“The provisions of this contract shall apply to the succes-

sors or assigns succeeding to the business of each of the parties hereto.

"In witness whereof the parties hereto have hereunto affixed their respective seals, duly attested, this day and year first above written. American Bridge Co.'s seal, E. M. F. Miller, President. Attest: Robert S. Green, Secretary. Carnegie Steel Co.'s seal, L. C. Phipps, Second Vice-President. Attest: A. M. Moreland, Secretary."

I will ask you whether or not there was such a contract made with the Carnegie Steel Company and in force while you were an officer of the American Bridge Company?

A. There was such a contract between the Carnegie Steel Company and the American Bridge Company.

MR. DICKINSON: Mr. Lindabury, I would like you to agree that I may introduce this copy in evidence instead of the original.

MR. LINDABURY: Where is the original, do you know?

MR. DICKINSON: I really do not know. Of course we could search for it. I mean to offer this subject to correction, of course.

MR. LINDABURY: Let me see. Did Mr. MacRae get this from the Carnegie Company? I suppose he did.

MR. DICKINSON: Yes; it was presented to the board.

MR. LINDABURY: We will admit it, subject to correction.

MR. DICKINSON: The same as if it were the original?

MR. LINDABURY: Yes.

MR. DICKINSON: Then I offer it in evidence.

(The paper, so identified, was thereupon offered in evidence, and marked "Government's Exhibit Roberts No. 87, May 21, 1912.")

MR. DICKINSON: That is all, Mr. Lindabury.

MR. LINDABURY: All with this witness?

MR. DICKINSON: That is all for the present, yes.

CROSS EXAMINATION.

By MR. LINDABURY:

Q. Mr. Roberts, you are not a director at the present time, I take it, of the Bridge Company, are you?

A. No, sir; I am not a director of the Bridge Company.

Q. But as a director of the Steel Corporation and a member of the Finance Committee you perhaps have been informed as to the percentage of the business of the country that the Bridge Company is doing in its particular line or lines.

MR. DICKINSON: I except to the form of the question. You had better ask him if he is informed.

MR. LINDABURY: It is only whether he is informed or not.

By MR. LINDABURY:

Q. Do you know, Mr. Roberts?

A. From the——

Q. Just answer yes or no to that.

A. Yes, I do.

Q. What is it?

A. At the present time it is about 32 per cent. of the entire output of the United States of fabricated structures of the kind we fabricate.

Q. Has the output of the United States increased since the American Bridge Company was formed?

A. Very materially.

Q. How much?

A. The output at the time of the formation of the American Bridge Company was about 1,200,000 tons per annum, which has increased until in 1911 the output was about two and one-half million tons.

Q. So that it had more than doubled during that period?

A. Yes.

Q. I take it from some of the records read here that there were a number of important concerns that did not go into the Bridge Company at the time of its formation?

A. There were a number of important and active concerns which did not enter into the American Bridge Company at the time of its formation.

Q. What was the percentage of the business of the country that the American Bridge Company did at the time of its formation in the lines in which it was engaged?

A. In the neighborhood of 38 per cent.—less than 40—I think about 38.

Q. What was the percentage of the business of the country done by the American Bridge Company in its particular lines when it was taken over by the Steel Corporation?

A. It remained about the same as upon its formation, as that time was less than one year after its incorporation.

Q. Did it ever have a monopoly of the business?

A. In no sense of the word. The records will show that it secured less than 50 per cent. of the work which it bid upon in its early days.

MR. DICKINSON: I object to his speaking of the records unless they are produced.

By MR. LINDABURY:

Q. To what records do you refer?

A. The details prepared by the proper officers during the first year, or year and a half, of its existence.

Q. You made some reference to Mr. Swank's statistics. Do they cover this?

A. No. That remark of mine applies to the amount of business which they did as respects the amount which they bid upon, and it was made up from the records of the American Bridge Company.

By MR. DICKINSON:

Q. What time are you talking about?

A. We are talking about the year 1900, and the early part of 1901.

By MR. LINDABURY:

Q. Did you try to get all the plants you could when the American Bridge Company was formed, or did you purposely omit or refuse to take over some of them?

A. The purpose of the formation of the American Bridge Company was simply along the lines of economical shop management, and had no reference whatever to any monopoly or to securing the entire industry of the country. The plants which became a part of the Amer-

ican Bridge Company were believed to be in a position to be operated more economically as a combined whole than as independent units, and the foundation of that company was the securing of a steel works whereby they could obtain to a large extent the control of their raw material for fabrication, the basis of practically all structural contracts being one of time, the time of delivery being the most important factor in practically 90 per cent. of all contracts taken. These independent units found themselves at that time in a very disadvantageous position, due to the fact that the large steel plants were commencing to do their own fabricating, whereby they were enabled to control their rolling mill supplies, and make such deliveries as these independent fabricating shops, having no control over the raw material, could not do.

There was also another reason for it, namely, that contracts were increasing so rapidly in magnitude that as independent units they were unable to secure sufficient working capital to enable them to fabricate these large tonnages.

You can trace from the very beginning of the securing and assembling of their raw material through the designing, fabrication, transportation and erection work, and the increase in their working capital, the reasons for putting together those plants, which were of two principal characters: First, they were partly competitive, I might say by reason of a greater or less similarity of output, and by reason of a common territory into which the transportation rates enabled them to ship the material, and, second, plants absolutely non-competitive, due (a) by reason of an entirely dissimilar output, and (b) by reason of their geographical location.

The whole scheme was one to decrease cost of production and to operate along the lines of what at the present time is termed scientific shop management. As a matter of fact, any advance in prices was not discussed, to my knowledge; nor did any such enhancement ever take place. Competition at all times was extremely severe and the profit on the output decreased from the time of the formation of that company until the present day. A number of concerns were offered to the American Bridge Company at the time of its formation which were declined for various reasons, because they did not seem

to be essential in the rounding out of the proposition that I have referred to.

MR. DICKINSON: That answer is objected to as largely not responsive to the question, and a volunteered dissertation by the witness.

MR. LINDABURY: That is an objection which I think I only can make, and I accept the answer.

By MR. LINDABURY:

Q. Has the number of concerns in the business increased since the American Bridge Company was formed?

A. At the time of the formation of the American Bridge Company my recollection is that there were over 100 plants engaged in a similar line of business. As of May, 1911, that number had increased to about 375.

Q. From what?

A. From something over 100, possibly 120, to 375.

By MR. DICKINSON:

Q. And what time are you speaking of now?

A. In May, 1911, the number was 375. The American Bridge Company, in May, 1911, had 24 plants, I think, and the total number of plants in the country at that date was 400, or within one or two of that number.

Q. You have stated that the production has been increased over 100 per cent?

A. I have the exact figures, if you care to have them.

Q. No; it will do for all purposes, if you will tell us generally, I think.

A. I am substantially correct in what I have said.

Q. In which has been the greater increase—the products of the independents or the American Bridge Company?

A. The products of the Independents. The American Bridge Company has fallen from a percentage of over 40 per cent to a percentage of about 32 per cent.

Q. But its business has increased, nevertheless, has it not?

A. Oh, it has increased from approximately 500,000 and some tons per annum to nearly 800,000 tons per annum.

Q. Have there been important changes in this particular

branch of the industry during the last ten or fifteen years? I refer to the structural steel business.

A. As to the magnitude of contract, yes, a great change; and as to size of individual members, and such things as that, there have been great changes.

Q. Would it be practical to do the business on the scale that it was done fifteen years ago?

A. Impossible. It was a question of life and death to those concerns which combined together in the American Bridge Company.

Q. Why?

A. Because as independent units they had insufficient working capital. They were unable to cope with the great increase in the size of their contracts. You may recall that 20 years ago a few iron or steel beams were used on brick walls. In 1900 a thousand-ton contract for a building was supposed to be an enormous contract. To-day we talk of 15,000 and 20,000 tons in one building. It was simply impossible for those concerns, operating as they were, to continue. Some of them were quite small, some had very little capital. They were very largely carried by the steel-making plants. Their paper was renewed every four months. Sometimes settlements were not made for two or three years after placing an order. It was absolutely necessary for them to do something for their own protection.

MR. DICKINSON: The answer of the witness is excepted to as irrelevant, and especially that part referring to the financial conditions of the several companies, that not being responsive.

MR. LINDABURY: Objection objected to as irrelevant and immaterial.

By MR. LINDABURY:

Q. Take the illustration that occurs to my mind. Take this Woolworth Building going up here in New York. Was there any concern in the business fifteen years ago which could possibly have constructed that building, with the equipment they then had?

A. Yes; I think there were probably two such concerns.

Q. What concerns were they?

A. The Carnegie Steel Company and the Pencoyd Iron Works.

Q. They could have done it?

A. Providing their contract obligations at that time were not such as to prevent the necessary delivery, which is always an important matter.

Q. Were there any other concerns except those two who could have done it?

A. I think not.

Q. The complaint in this case, the petition, rather, refers to the period when the American Bridge Company was formed as one of great consolidations in industrial plants and ventures. You know something about the business of the country generally in that respect. Were there any reasons generally operating, of economic or of other character, to account for that, Mr. Roberts?

A. There were, especially in the iron and steel business at that time.

Q. To some extent you have referred to them, and if you have anything to add on that line I would be glad to have you do it.

A. The substitution of wrought iron by steel had induced an entirely new set of conditions whereby old plants which had been established for the manufacture of wrought iron became practically obsolete, and it was a question of either developing these old plants along the lines of the manufacture of steel or putting them out of existence. The size of the units for the manufacture of wrought iron was small, and it was manifestly impossible that each of the individual units could be developed into a steel-making plant. As a result, a number or group of each of these individual old iron-making units found by combining together they themselves could then establish a steel-making plant which would serve the entire group, and it was from this change in metallurgical process that the original formations which subsequently formed the subsidiary companies of the Steel Corporation took place. Individually they were not large enough to operate in steel, but combined they could do so. That led from this small beginning, and we find the integra-

tion of process which took place. In the day of wrought iron, one man had the ore, another man the blast furnace, another man produced puddled iron. There was no continuity of process whatever; nor did the nature of the art at that time require any such; but as soon as the process of steel making was developed it became one continuous operation, so that from the time the ore was charged in the furnace until the finished product was produced, the temperature of the metal was never reduced to the cooling point. In other words, the success of the process depended upon this continuity and operation with liquid metal, so that all these processes had combined into a whole, and very much larger units were necessary than had been used in the past. I do not believe that any of those consolidations would have ever taken place, had it not been for the advanced state of the iron and steel metallurgical art.

Q. When did this transition take place from the manufacture of iron to the manufacture of steel?

A. Largely during the period from 1893 to 1900, possibly. There were beginnings, of course, in a small way, as early, probably, as 1885, but the large transitions took place, I should say, subsequently to the year 1890.

Q. Was it inconsequential or was it revolutionary?

A. It was revolutionary. In addition to that electricity became a motive power and changed all the operations of the works. Works had to be rebuilt at the expenditure of large additional capital. The old concerns which did not consolidate, as a matter of fact, largely went out of existence.

Q. Is the transportation of the fabricated material used in buildings and bridge work expensive?

A. Necessarily so.

Q. How does it compare with the expense of transporting other steel products?

A. Many of the members are of such a shape that it is impossible to get a full car load on one car; consequently it is necessary to pay for the full carload rate, although you are shipping below the minimum requirement of the carload. For instance, while you may have a beam weighing five tons, you may have to pay a ten-ton rate for delivery.

Q. Did this limit the competition between the concerns located at different points?

A. Very materially. Bridge structural work was very much more of a local character, outside of a few concerns, than what we know as the products of the rolling mills. The products of the rolling mills would require very much longer transportation than finished fabricated material. For instance, the rate on that class of material would be lower per ton as a rule than on fabricated material.

Q. Was the organization of the American Bridge Company had at all with reference to the location of the plants which it acquired?

A. Yes. The plants were largely scattered throughout the country serving the eastern markets, central west and also some of the northwestern points and western points.

Q. And what advantage, if any, accrued to the company on this account?

A. Geographical location was of great benefit, of course; almost essential to the success of the enterprise contemplated.

Q. Was it more advantageous to the company than to have plants in these different localities around the United States than to have one large centrally located plant?

A. Yes, sir; it would not have been possible to have accomplished the same purpose with one plant in any one location as could have been accomplished by having individual units located in various territories tied together by general methods of economy. You will find that in all the territories in which shops of the American Bridge Company exist, there were also very large independent shops, so that competition existed at all those local points.

Q. Coming down to the organization of the Steel Corporation, I think you said you had a talk with Robert Bacon, in which he asked you to become a director of the Steel Corporation. Am I right about that?

A. Yes.

Q. Perhaps that had better be read.

(The question was read by the stenographer as follows:)

“Q. Coming down to the organization of the Steel Cor-

poration, I think you said you had a talk with Robert Bacon, in which he asked you to become a director of the Steel Corporation. Am I right about that?"

A. I did.

Q. Did you have any talk with any other member of Mr. Morgan's firm about the disposition of your own stock or the terms that J. P. Morgan & Company, on behalf of the Steel Corporation, were proposing or were about to propose to the stockholders of the Bridge Company?

A. Individually, but without any connection whatever as an officer of the American Bridge Company, in which capacity I understood this morning that my testimony was given. I had a talk about that time with Mr. Charles Steele of the firm of J. P. Morgan & Company, who stated to me that it was suggested or had been suggested that an exchange of the stock of the American Bridge Company be made for the stock of the United States Steel Corporation, if I remember it correctly, in the proportion of 110 of preferred Corporation for 100 preferred Bridge Company stock, and 105 of the Corporation common stock for 100 common stock of the Bridge Company; and generally asked my views in regard to it as a stockholder. I told him that individually I considered that it was a fair proposition, and that I would be willing to exchange my stock on that basis, but this was not in connection with any position which I then held in the Bridge Company.

Q. I understand it was to you as an individual stockholder?

A. Exactly.

Q. Were you a substantial owner of the stock of the Bridge Company? I think Judge Dickinson asked you that this morning, but my recollection is that the answer did not cover it.

A. I held individually one-third of the stock received in settlement for the securities of the A. & P. Roberts Company, and I held as one of two trustees another one-third of the same securities. It was a substantial amount of the stock of the American Bridge Company.

Q. How long was this conversation with Mr. Steele before the Morgan circular went out?

A. Quite a short time; not very long; but events were

shaping themselves very rapidly in those days. But it was within a reasonable time; I could not say whether it was within a few days, but the circular was issued a short time thereafter. I do not know as to what views were expressed, but my interview was prior to the date of the issuing of the circular.

Q. You understood the inquiry of you this morning, I take it, to relate to your capacity as an officer of the Bridge Company?

A. Entirely so. I understood the question to be whether any corporate action by the Bridge Company had been taken by its directors or officers in regard to an exchange of stocks of the Bridge Company for those of the Steel Corporation.

MR. DICKINSON: What inquiry do you mean, Mr. Lindabury? Will you be more specific in that? I inquired a good deal of him this morning about various things. How broad is that?

MR. LINDABURY: The inquiry with respect to the action taken by him before the Morgan circular was sent out in connection with the proposed purchase of the Bridge Company's stock.

MR. DICKINSON: It relates simply to that, does it?

MR. LINDABURY: Yes.

MR. DICKINSON: Very well.

MR. LINDABURY: That is all.

REDIRECT EXAMINATION.

By MR. DICKINSON:

Q. You say, Mr. Roberts, that in 1911 the American Bridge Company made 32 per cent of the fabricated structural work of the entire United States?

A. About 32 per cent, I think.

Q. Does that include bridge work?

A. It does.

Q. And such work as is used in large buildings?

A. It does.

Q. Mr. Roberts, how do you know that fact?

MR. LINDABURY: You proved 33 per cent the other day. There does not seem to be much difference between us.

MR. DICKINSON: I do not think I did.

MR. LINDABURY: Your witness Dean said 33 per cent.

MR. DICKINSON: You brought that out, but I think I explained it in redirect. I do not think it was correct at all.

MR. LINDABURY: Oh, do you not?

MR. DICKINSON: Not at all.

MR. LINDABURY: He said 33 per cent, did he not, on cross-examination?

MR. DICKINSON: He said 33 per cent of the entire statistics reported.

MR. LINDABURY: That is right. Some were not competitors in interstate commerce or something?

MR. DICKINSON: Yes.

MR. LINDABURY: I see what you mean now.

By MR. DICKINSON:

Q. Read the question I asked Mr. Roberts.

(The question was read by the stenographer as follows:)

“Q. Mr. Roberts, how do you know that fact?”

A. From statistics I have seen and from capacities of plants in the country and by work estimated upon, taken and lost, by the American Bridge Company.

Q. What statistics did you see upon which you predicated that answer?

A. Statistics prepared by the American Bridge Company.

Q. Where are they?

A. I think I have them here.

Q. Will you produce them?

A. If you want them.

Q. Yes, I would like to have them.

A. Shall I produce them and let you have them?

Q. If you please.

A. I am very sorry, but I have been given the wrong envelope this morning. The envelope containing the data you want is not here.

Q. Can you send for it?

A. I can produce it. It is in Philadelphia.

Q. Can you telegraph for it and have it here to-morrow morning?

A. I am afraid I cannot have it here by that time. It is in another envelope.

Q. Can you get it here by day after tomorrow?

A. Yes.

Q. Then we will go on now with other matters.

You say your answer was based partly on the statistics which you are going to produce?

A. It was based on statistics prepared by the American Iron and Steel Association and by various peoples in the American Bridge Company.

Q. Was that part of your answer where you said that of the entire fabricated material in the United States in 1911 only 32 per cent was made by the American Bridge Company based entirely on that?

A. I think the statistics on which that was based were entirely those of the American Iron and Steel Association and of the American Bridge Company.

Q. And that answer was based on those statistics?

A. Yes.

Q. And not upon any personal information of yours, or personal knowledge?

A. I have no personal information other than from statistics which have been furnished me.

Q. You stated that there were important concerns which did not go into the American Bridge Company at the time of its formation. Please enumerate the concerns which did not go in, which the Pencoyd Company at that time had been meeting in competition in interstate commerce in bridge structures and in structural material for buildings?

A. One very active one that I recall is the Phoenix Iron Company; another the Pennsylvania Steel Company; another the Carnegie Steel Company, in its fabricating plants for buildings. For the complete list I would refer you to the publications of the American Iron and Steel Association.

Q. The Association's publications would not explain which of those companies were competitors of your company at that time in interstate commerce, would they?

A. By referring to the publication I could refresh my memory as to a complete list of those which did not go in and whether they were competitors of the Pencoyd Iron Works

or not. Offhand I am not prepared at this time to give you a complete list of them.

By MR. LINDABURY:

Q. Haven't you that publication here?

A. I have.

By MR. DICKINSON:

Q. What year is that?

A. 1903.

Q. I am asking you about 1900.

A. I am only refreshing my recollection from it, as to recalling the names.

MR. LINDABURY: You do not mind his looking at the names, do you, so as to refresh his recollection?

MR. DICKINSON: I mind it just now; yes.

By MR. DICKINSON:

Q. How about the McClintic Marshall Company?

A. The McClintic Marshall Company started about 1900, I think. Prior to that time they may have operated in a small way, but they became a factor about the time of the formation of the American Bridge Company.

Q. And were a competitor of the Pencoyd?

A. Not prior to the formation of the American Bridge Company.

Q. I mean at the time of its formation?

A. They commenced about at that time. They leased a work at Pottstown, Pennsylvania, known as the Cofrode & Saylor Works.

Q. You mentioned the Phoenix Company?

A. And the Phoenix Company.

Q. The Pennsylvania Steel Company?

A. And the Pennsylvania Steel Company.

Q. And the McClintic Marshall Company, with the explanation you have given.

A. Exactly.

Q. And the Carnegie Steel Company?

A. In so far as fabricating building work was concerned.

Q. Can you now from memory name any others who at that time were competitors of the Pencoyd Works in bridge and structural work, in interstate commerce?

A. Prior to the——

Q. At the time you went into the American Bridge Company?

A. Prior to that time?

Q. Well, within a year, say, prior to that time?

A. The King Bridge Company at Cleveland; there was a concern at Baltimore, whose name I do not recall; there was the Roanoke Bridge Works, at Roanoke, Virginia.

Q. What did that concern make?

A. Railroad bridges.

Q. What was the capacity of that concern?

A. I do not recall. There were a number of works scattered through the Middle West; I really do not recall the names of them now, because you must bear in mind that this competition on the part of a number of these outside concerns was intermittent. For instance, if we entered into their territory we would come in competition with them. We might not enter into that territory again for some months. There were other concerns which were constantly competitive, just as I have enumerated, the Phoenix Company and the Pennsylvania Company, both of which were located in the immediate territory in which the Pencoyd Iron Works were located.

Q. They were constant competitors, were they?

A. They were constant competitors.

Q. Including those which were constant competitors, and those which were intermittent or remittent, have you named all now that you can name from memory who competed with you at that time in that work?

A. The Passaic Rolling Mill Company of Paterson, New Jersey; the Boston Bridge Works of Boston, Massachusetts——

Q. What was the capacity of the Boston Bridge Works?

A. I do not recall offhand. For full information in reference to these matters I would refer you to the publications of the American Iron & Steel Association.

Q. Was there any publication for the year 1900?

A. There was not.

Q. Was there any for the year 1899?

A. The first publication, I believe, of a complete list of the bridge works, independent of steel making establishments, will be found in the supplement to the Iron & Steel Works Directory for the year 1903.

Q. I will ask you whether or not that does not include some of those concerns that had started in business after the middle of the year 1900?

A. It would include any which had started in business up to January 1st, 1903.

Q. Have you undertaken to go over those and tabulate them, and the percentage of their product, and then exclude them in your estimate for the year 1900?

A. My estimate for the year 1900 was not based upon statistics for the year 1903?

Q. What was it based on?

A. It was based on the list of plants which had been prepared for the year 1900. Where that list came from I am not at this time prepared to say.

Q. Did you prepare it?

A. I did not.

Q. Do you know what the output of the various concerns on that list was?

A. I think the total output on that list was something like over a million tons.

Q. Where is that list?

A. I do not recall whether I have seen any list in detail giving the names as set forth in this supplement to the directory prior to that time. It may be that the list was prepared by taking the names from this book of the concerns which were known to be in existence during the year 1900.

Q. But you did not prepare that?

A. I did not.

Q. You do not know how it was prepared?

A. I do not.

Q. You have no independent memory as to the outputs and percentages?

A. I have not.

Q. When you stated the percentage of the American

Bridge Company for the year 1900, you based it upon that table which you speak of?

A. Which table?

Q. Have you not just spoken of a table or list?

A. No. I did not say it was based on that. I say it may have been based on that as a basis. In other words, the names may have been taken from this book of these concerns which were actually in existence in 1900, or they may not have been.

Q. Whether it was or not you do not know?

A. I do not, no.

Q. When you state what the percentage was produced by the American Bridge Company in 1900, what do you base that statement on?

A. Upon statistics which were prepared as of the year 1900, but how they were arrived at I am not prepared, off-hand, to state.

Q. And whether they are correct or not, you do not know?

A. To my best knowledge and belief, they are correct, and I think among my statistics, the statistics which I have, there are some matters which bear on this subject.

Q. You say to the best of your knowledge and belief they are correct, and you also say, I believe, that you did not prepare them?

A. I have examined them.

Q. You examined them, but did you compare them with the sources from which they came?

A. Yes, to a considerable extent I checked them up, separating the independents, that is the independent fabricators, from those which were adjuncts of the steel works, and I formed the opinion that the figures I had were correct.

Q. When did you check them up?

A. Probably a year ago.

Q. Have you any memory of what you excluded from them as being non-competitive, and what you counted as being competitive?

A. I did not check them up as competitive or non-competitive.

Q. How did you check them up?

A. I checked them up by their outputs, the capacities of their shops, and what relationship the output of the American Bridge Company bore to the output of other concerns in the same line of business.

Q. Where is that paper?

A. The statistics or the result of those tabulations I have, are, as I say, in Philadelphia.

Q. Oh, I thought that was the one for the year 1903?

A. No; it is as of the year 1900.

Q. Then you have two. Have you one for the year 1900 and the other for the year 1911?

A. That is right. I have one for the year of the formation of the corporation, which is the year 1901, and I have also the tabulation as of the year 1911.

Q. You will produce both of those, then?

A. I will produce both of those.

Q. I show you a contract with the Carnegie Company, which you said had been made with that company, and I call attention to a clause as follows:

“Should the Bridge Company not make two-thirds of all the bridges, viaducts, elevated railroads, station sheds, and similar works erected in the United States, then shall the Steel Company, if it so elects, have the full right, privilege and option of engaging again in the bridge business.”

Did you at that time have a capacity to do two-thirds of all the work on bridges, elevated railroads and viaducts?

A. No sir; never did have.

Q. And yet you made this contract providing for that?

A. I think that is a contract of more interest to lawyers than to the principals.

Q. Made in the interest of the lawyers, then, you think?

A. I think so. You can drive a horse and cart through it anywhere.

Q. Then I presume no lawyer wrote it?

A. Well, it depends on the way you look at it.

Q. You stated that in May, 1911, there were 375 concerns in the United States making the same character of work made by the American Bridge Company, did you not?

A. That is correct.

Q. And those 375 concerns are shown by the American Iron & Steel Directory, are they?

A. Those 375 concerns are named and their capacities given, and the statistics are prepared by the agents of the American Bridge Company.

Q. Would they appear in the directory for 1911 or 1912?

A. No; it is a statement prepared by the selling agents of the American Bridge Company giving a list of names of their competitors, where located, and the annual capacity of their shops.

Q. As of May, 1911?

A. As of May, 1911.

Q. You say there were important changes as to the magnitude of contracts which had come about within the last ten or fifteen years. State whether your competitors now in the business are able to take any of those contracts, or the larger ones, or whether the American Bridge Company alone is able to handle them?

A. They are taken both by the American Bridge Company and by their competitors, or by at least some of their competitors.

Q. Take the competitors that we have just mentioned. Take the Phoenix Iron Company. Are they able to handle them?

A. They had a contract for the largest bridge structure which has ever been contracted for, namely, the Quebec Bridge, which fell down.

Q. Are they able to take the contracts of the magnitude that you speak of here?

A. They are.

Q. How about the Pennsylvania Steel Company?

A. The Pennsylvania Steel Company are in a position to take a contract of any magnitude. They have had most of the contracts for the bridges across the East River in New York.

Q. How about the McClintic Marshall Company?

A. They are fully able to take contracts of magnitude. Their banking facilities are such as to enable them to do it.

Q. These concerns were all competitors of yours when the American Bridge Company was formed, were they?

A. They were and were not included in the—

Q. (Interposing). And have continued to be competitors and are able to take care of the same character of contract that you are?

MR. REED: You do not mean the McClintic Marshall Company, do you?

THE WITNESS: They were formed about the time of the formation of the American Bridge Company.

MR. DICKINSON: A year before, I think.

By MR. DICKINSON:

Q. You spoke of concerns going into the American Bridge Company that were individually not large enough to bid upon the contracts of the character that we have been speaking of, but combined could do so. Was not the Pencoyd Works able to bid upon contracts of that character, without any combination?

A. The Pencoyd Works did not go into the combination in the same manner nor were they interested at all to the same extent as the other concerns. The Pencoyd Iron Works were purchased by Mr. Ladd for the purpose of furnishing a steel works to these independent fabricating shops, and they did not enter into that agreement on the same terms, nor did they take any part in the negotiations which led up to the formation of that company.

Q. Now, will you answer whether or not the Pencoyd Works was at that time able to take the largest contract, a contract of the largest character of contracts that were let at that time, in bridge construction work?

A. It was and did.

Q. How about the Carnegie Steel Company?

A. I think they were fully capable.

Q. How about the Lassig Bridge & Iron Works?

A. The character of work they did was on a somewhat more limited scale. As to their financial ability, I do not think their resources were as great as the companies you have already named.

Q. Were they competitors of yours?

A. They were competitors of ours on certain lines of business.

Q. And meeting you in competition on those lines of business at that time, were they?

A. On those lines of business, yes. They were also customers.

MR. LINDABURY: Which company was this?

THE WITNESS: The Lassig Company. It was a customer as well as a partial competitor of the Pencoyd Iron Works.

By MR. DICKINSON:

Q. Take the Edge Moor Bridge Works? What sort of a concern was that?

A. They were a fabricating shop largely owned by William Sellers of Philadelphia.

Q. Were they competitors of yours?

A. To a limited extent, yes.

Q. What do you mean by to a limited extent?

A. As I explained previously, the competition between these various concerns was of a partial character. They might come in competition on a certain piece of work in common territory, and not be competitors outside that territory; and some of them built certain classes of work. For instance, the Edge Moor Work was confined practically to railroad bridges. They fabricated no buildings. They would come in competition with the Pencoyd Works on certain railroad bridge work.

Q. Was the Carnegie Company compelled to go into an organization of this sort on account of its inability to go on financially, on account of the character of its work and its inability to compete with other people in that line of business?

A. The Carnegie Company owned and operated the Keystone Bridge Works, which had no physical connection whatever with the balance of their plants. It was independent, independently located; it had not been very profitable; in fact, it had been losing money for some time, simply for the want of proper organization and attention.

Q. For the want of attention?

A. Their entire energy was concentrated upon the production of rolled steel, and the Keystone Bridge Works was left to run as best they could.

Q. The Carnegie Company financially was able to develop it and run it?

A. Oh, perfectly. It was want of interest and not want of ability.

Q. You do not mean to say that was put in because of inability or on account of not having any financial backing, or on account of any danger of bankruptcy?

A. No; it was put in, I think as a basis to obtain the contract you read a little while ago, to secure 51 per cent of the rolled material and 75 per cent of the plates of the new corporation.

MR. LINDABURY: I call attention to the fact that our hour for adjournment has arrived.

MR. DICKINSON: I think we had better let Mr. Roberts go, now, until day after to-morrow when he will have the papers that he has been requested to bring. If Friday will suit as well, he may return Friday.

MR. LINDABURY: Very well.

(Whereupon, at 4 o'clock p. m., an adjournment was taken until to-morrow, Wednesday, May 22, 1912, at 10:15 o'clock a. m.)

ELEVENTH DAY.

Room 720 Custom House,
New York, N. Y.,

Wednesday, May 22, 1912.

The hearing was resumed at 10:15 o'clock a. m. before
SPECIAL EXAMINER HENRY P. BROWN.

Appearances the same as heretofore noted.

MR. LINDABURY: I understand that Mr. Roberts desires to make a correction in his testimony of yesterday.

MR. ROBERTS: I should like to have that privilege for a moment.

MR. DICKINSON: Very well. Just dictate your correction to the stenographer.

PERCIVAL ROBERTS JR.,

the witness under examination when the adjournment was taken, resumed the stand for the purpose of making a correction in his testimony.

THE WITNESS: I have with me this morning copies of two sheets of statistics—

MR. DICKINSON: I thought Mr. Roberts just wanted to correct a statement.

MR. LINDABURY: Just make the correction and, if necessary, you may explain it later.

MR. DICKINSON: He can make any explanation afterwards, when you take him up.

MR. LINDABURY: Yes. Just make the correction, now.

THE WITNESS: In answer to a question yesterday as to the percentage of the capacity of the American Bridge Company at the time of its formation as compared with the capacity of other concerns engaged in the same character of business I stated that it was 38 per cent. I had in mind statistics which I had seen on that subject, the actual date of which I find to be as of February, 1904, expressing the conditions as of the close of the year 1903.

MR. DICKINSON: What correction do you want to make?

THE WITNESS: I wish to substitute that for my former answer.

MR. DICKINSON: You wish to substitute what?

THE WITNESS: The answer I have just given.

MR. LINDABURY: That is, that that was the percentage at that date?

THE WITNESS: The 38 per cent. represents conditions as of the year 1903. I did not give any exact year yesterday, but I stated that it was as of the time of the formation of the American Bridge Company.

MR. SEVERANCE: Which was 1900?

THE WITNESS: Which was about the middle of the year 1900.

MR. DICKINSON: Will you leave that paper with me?

THE WITNESS: Yes.

MR. DICKINSON: I will take it up with you on Friday.

Have you given any percentage as of the time the company was formed?

THE WITNESS: I have not.

By MR. LINDABURY:

Q. Are you or are you not able to do it now?

A. I am not this morning.

Q. I will ask you to look it up between now and Friday if you will, please.

A. Yesterday afternoon, after I had given 38 per cent. I was not clear as to the date. I knew it was of record, and I thought it applied to the year 1900.

Q. Yes.

A. But the actual date would be as of the year 1903.

Q. If you can get the data for 1900 before Friday, I should be glad to have you do so.

A. I shall try to do so.

Q. This paper which I have in my hand is the one to which you just referred in your testimony a moment ago?

A. Yes. I have the original of that in Philadelphia. It is among the statistics which I promised to produce on Friday.

Q. But this is a copy of it?

A. That is a copy of the statistics which were prepared about a year ago.

MR. DICKINSON: That is all, Mr. Roberts, for the present.

C. D. MARSHALL,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. DICKINSON:

Q. Your name is C. D. Marshall?

A. Yes, sir.

Q. Where do you live, Mr. Marshall?

A. Pittsburg.

Q. How long have you lived in Pittsburg?

A. All my life.

Q. What is your age?

A. Forty-five.

Q. In what business are you now engaged?

A. In the structural steel and bridge business.

Q. With what concern?

A. The McClintic Marshall Construction Company.

Q. Are you the Marshall in that company?

A. Yes, sir.

Q. Is that a corporation or a partnership?

A. It is a corporation.

Q. Are you an officer in that corporation?

A. I am the president of the company.

Q. When was that corporation formed?

A. In 1900.

Q. Before that what was your business?

A. I was with the Shiffler Bridge Company.

Q. Where was that located?

A. In Pittsburg.

Q. When did you leave the Shiffler Bridge Company?

A. February 1, 1900.

Q. State whether or not the Shiffler Bridge Company was taken over by the American Bridge Company.

A. It was.

Q. You left shortly prior to that time?

A. Shortly after that time.

Q. Shortly after that time?

A. Yes.

Q. Did you or did you not go into business before the formation of the American Bridge Company?

A. We did, yes.

Q. Under what firm name?

A. The McClintic Marshall Construction Company?

Q. The same company with which you are now connected?

A. Yes.

Q. How long had you been with the Shiffler Bridge Company?

A. Since the fall of 1888.

Q. Then, from the fall of 1888 up to 1900?

A. Up to 1900; yes, sir.

Q. State, generally, in what business the Shiffler Company was engaged during that time.

A. The manufacture and erection of steel bridges, buildings, and miscellaneous structural steel work.

Q. In what capacities did you serve with that company?

A. I started there as draughtsman and ended up as chief engineer and secretary of the company.

Q. State whether or not you had a general acquaintance with the character of the business in which they were engaged, and with the people who were in like business, competing with them.

A. I thought I was pretty well posted at the time.

Q. Was that or not a part of your business in connection with them?

A. Yes, sir; I had charge of the contracting business.

Q. Since you left them and have been with the McClintic Marshall Company, state what acquaintance you have had with the business in which that firm is engaged and with those who are in competition and have been in competition with them up to the present time.

A. Ever since the McClintic Marshall Construction Com-

pany was organized, I have been directly interested in the management of the company from beginning to end.

Q. Did that involve a knowledge of sales?

A. Yes, sir.

Q. And of the people who were competing with them in sales for like material?

A. Yes.

Q. Generally?

A. Yes.

Q. Have you been generally informed then throughout that period of the business carried on by those companies and those who are competing with them?

A. I think I have been.

Q. That is from along about 1890 up to the present time?

A. Yes, sir.

Q. What property did the McClintic Marshall Construction Company first acquire?

A. The plant at Pottstown.

Q. Pottstown, Pennsylvania?

A. Yes, sir.

Q. At that time what was the capacity of that plant?

A. It was a little less than 18,000 tons a year.

Q. And what kind of material did that cover?

A. Buildings and bridges and general structural steel work.

Q. In what business was the Shiffler Bridge Company engaged at the time it went into the American Bridge Company?

A. The Shiffler Bridge Company?

Q. Yes.

A. The manufacturing of bridges and buildings and general structural steel work.

Q. After you acquired the works at Pottstown, did or did not your company extend its plant?

A. Yes, sir.

Q. Where?

A. At Pittsburg.

Q. And what was the capacity of that extension?

A. Well, it has increased from time to time.

Q. Your whole capacity at the time of the formation of

the American Bridge Company was, as I understand you to say, about 18,000 tons?

A. Yes, sir.

Q. Mr. Marshall, I would like you to describe now the process of fabrication pursued by the Shiffler Bridge Company and your Company and other companies that were engaged in like business and in competition in interstate commerce, that is to say, what they produced and what was the process through which it went, and what they sold in interstate commerce in competition with each other.

MR. LINDABURY: Are you asking about companies that fabricated only?

MR. SEVERANCE: That is what he asked for.

MR. LINDABURY: Some fabricated only, you know.

MR. DICKINSON: Yes. Read the question.

(Question was read by the stenographer as above recorded.)

A. They purchased from the rolling mills plates, bars, and shapes, and did certain work on this material, fabricating it into the parts of a finished structure, which afterwards were shipped to the point of location and erected into buildings and miscellaneous structural steel works.

By MR. DICKINSON:

Q. You mentioned plates, did you?

A. Yes, sir.

Q. Did you mention angles?

A. Well, angles are considered a shape.

Q. And beams?

A. Beams.

Q. What is an angle?

A. An angle in our business is any piece of iron that is shaped to contain an angle.

Q. What kind of machinery did those companies that do the kind of fabricating that you have described have?

A. It is quite a variety of machinery in the way of punches, reamers, riveting machines, planers; practically all sorts of tools for shaping steel work.

Q. State whether or not the plant doing fabricating work

is the same character of plant as that which makes the structural material?

A. Practically the same.

Q. Read the question, please.

(The question was read by the stenographer as above recorded.)

A. You mean the material which we purchased?

Q. Yes.

A. Oh, entirely different.

Q. What kind of concerns make the material that you purchased?

A. Rolling mills principally; steel works.

Q. That material is bought from the rolling mills, and then is fabricated in the way that you have explained by these concerns that you have mentioned who are in the bridge building business and the structural business?

A. Yes, sir.

Q. State whether or not, in the mills as they were constructed and conducted at that time when the American Bridge Company was formed, that was a continuous work; that is, making the material and fabricating it?

A. No, sir.

Q. How is it now?

A. Just the same now as it was then.

Q. It is not a continuous work?

A. It is not a continuous work.

Q. Is the material taken right hot from the process in which it is made and then worked up under this fabricating process of which you speak?

A. The fabricating process is an entirely separate and distinct operation.

Q. From making the structural material?

A. It cannot be connected up in any way with the rolling mill.

Q. Are you or are you not generally familiar now, or were you generally familiar at the time of the formation of the American Bridge Company with the names of the concerns that went into the American Bridge Company?

A. I recall a number of them.

Q. Mr. Marshall, state the names of those that went into

the American Bridge Company who were the largest producers in their lines at that time?

A. My opinion of the relative sizes would be as follows: The Pencoyd Iron Works.

Q. That is the A. & P. Roberts Company?

A. Yes, sir.

Q. Was that or was it not the largest?

A. That is the way I would have considered it; and the Keystone Bridge Works.

Q. Where was that?

A. That was in Pittsburg. And next I would say the Edge Moor Bridge Works, and probably fourth the Lassig Bridge Company, of Chicago.

Q. Mr. Marshall, those companies, according to your recollection, you say, were the four largest companies that went into the American Bridge Company?

A. Yes, sir.

Q. State whether or not at that time there were any concerns left outside of those that went into the American Bridge Company which were as large as any of those you have named?

A. Well, I always considered those four larger than any that were left outside.

Q. What did the Pencoyd Iron Works produce and sell?

A. The Pencoyd Iron Works?

Q. Yes.

A. I think they had a rolling mill in connection with their bridge shop. Their product, my recollection is, was largely bridge work.

Q. I mean of the kind of work in which you were competitors?

A. Bridge work and building work.

Q. What kind of bridges?

A. Railroad bridges principally.

Q. Any of the larger class of highway bridges or not?

A. Well, if the tonnage was sufficiently large in a highway bridge I think they would go after it.

Q. How about steel buildings?

A. I think they only sought steel buildings that had large tonnage.

Q. What, approximately, was the annual capacity at that time of the Pencoyd works?

A. It would be purely a guess on my part. I should think——

MR. SEVERANCE: Never mind. We object to any guess.

MR. DICKINSON: I will withdraw the question, then. I do not want a guess about it.

By MR. DICKINSON:

Q. What did the Lassig Bridge & Iron Works of Chicago produce of the things which you have mentioned as being sold in competition with the Shiffler Company and the McClintic, Marshall Company?

A. The Lassig's output was largely railroad bridge work.

Q. Did they also erect steel buildings.

A. On occasions.

Q. They did from time to time?

A. Yes.

MR. DICKINSON: Mr. Lindabury, I want to offer in evidence from the American Iron & Steel Works of the United States for 1901, pages 58 to 62, inclusive, so far as it comes under the head of "The American Bridge Company."

MR. LINDABURY: Do you mean a book of that title?

MR. DICKINSON: I want to offer those pages. I do not want to put in the whole book.

MR. LINDABURY: You refer to a book having the title you have just mentioned, do you?

MR. DICKINSON: It is the Iron & Steel Works of the United States, the same book, the character of which you proved the other day.

MR. SEVERANCE: Is that Mr. Swank's book?

MR. DICKINSON: Yes.

MR. LINDABURY: I do not suppose that, under objection, you could put in matter of this kind as substantive proof, but it is convenient, and we think that it would be better to agree to it, subject to correction, assuming, of course, that when we come to put in our case you will give similar consent.

MR. DICKINSON: Yes, sir. I would not offer part of a

publication upon its reputation and then object to your doing the same thing.

MR. LINDABURY: This does not contain mere statistics, you know. It goes beyond that. However, this case will be long enough, and I think we ought to in this way cover whatever we can on both sides.

MR. DICKINSON: You have already proved the character of the work.

MR. LINDABURY: That may be, and of course the court would admit a work of this kind in so far as it gives mere statistics of sales, and so forth, but this goes much further than that. Nevertheless, what it shows is probably true, and probably, in course of time, could be proven by you. We think it had better go in, subject to correction, and not raise any question about it.

MR. DICKINSON: That may go in with the understanding that if you want to put in any pages of this publication or any other work of a similar character, it may be done.

MR. LINDABURY: We do not ask for a stipulation.

MR. DICKINSON: I am speaking of this particular work.

MR. LINDABURY: We are entirely content to rely upon your extending the same courtesy, without any agreement.

MR. DICKINSON: Of course, we are now speaking only of this book.

MR. LINDABURY: I understand.

(Pages 58 to 62, inclusive, under the heading "The American Bridge Company," of the book entitled "American Iron & Steel Works of the United States for 1901," were thereupon offered in evidence and marked "Government's Exhibit, Witness Marshall, No. 88, May 22, 1912.")

By MR. DICKINSON:

Q. Mr. Marshall, state whether or not in constructing railroad and highway bridges and steel bridges, the Pencoyd Iron Works of the A. & P. Roberts Company were, at the time they were taken into the American Bridge Company, engaged in such work and such sales outside of the State of Pennsylvania as well as in the State of Pennsylvania.

A. They were.

Q. How general was their territory?

A. I think their territory covered the entire United States.

Q. The Lassig Bridge & Iron Works, you said, made railroad bridges and erected some steel buildings?

A. Yes, sir.

Q. What was their territory?

A. It was largely Chicago and the West.

Q. Outside of the State of Illinois?

A. Yes, sir.

Q. Did they or did they not come in competition with the Pencoyd Works in that class of work?

MR. LINDABURY: If the witness knows.

MR. DICKINSON: I am asking him if he knows. I said: "Did they or did they not?"

MR. LINDABURY: I do not know how the witness can know that.

MR. DICKINSON: That will be for you to bring out.

By MR. DICKINSON:

Q. Do you know? Were you engaged in the same line of work?

A. Yes, sir; I would say, yes.

Q. Did you or did you not meet them in competition in that character of work?

A. Yes, sir.

Q. Both of those companies?

A. Yes.

Q. You knew they were engaged in that class of business?

A. Yes, sir.

Q. And outside of the State of Illinois?

A. Yes, sir.

Q. As well as in it?

A. Yes, sir.

Q. What did the Shiffler Bridge Works make?

A. Bridges, buildings and miscellaneous structural steel works.

Q. They were in Pennsylvania, were they?

A. Yes, sir.

Q. Were they engaged in selling such material and constructing such work outside of the State of Pennsylvania?

A. Yes, sir.

Q. State whether or not, if you know, they were competitors at that time with these other concerns which I have named.

A. They were.

Q. What did the Keystone Bridge Works of Pittsburg make?

A. The same class of material.

Q. In what territory did the Keystone Bridge Works sell?

A. All over the United States.

Q. In what territory did the Shiffler Bridge Works sell?

A. All of the United States.

Q. What did the American Bridge Works of Chicago make?

A. I am not familiar with the product of the American Bridge Works of Chicago.

Q. We will pass that company, then, and take the Elmira Bridge Works, Elmira, New York. What did they make?

A. Their product was largely bridge work.

Q. Did they make any steel buildings?

A. I think they did, in a small way.

Q. In what territory did they build bridges and sell bridge material?

A. Largely in the East.

Q. Outside of sales in the City of New York?

A. Oh, yes.

Q. State whether or not in the same territory as that in which these other concerns that made bridges, which we have just mentioned, sold.

A. The same territory.

Q. And were they competitors in interstate business?

A. Yes.

MR. LINDABURY: This is all of your own knowledge, is it, Mr. Marshall?

THE WITNESS: Yes, sir.

MR. LINDABURY: All right, then.

By MR. DICKINSON :

Q. The Toledo Bridge Works, of Toledo, Ohio. What did they do?

A. They built bridges and buildings.

Q. In what territory?

A. Largely in the west.

Q. West of Ohio?

A. West of Ohio.

Q. Did they or not erect any steel buildings?

A. They did.

Q. Were they competitors of your company?

A. They were.

Q. In the territory in which they sold?

A. Yes.

Q. And of these other companies?

A. Yes, sir.

Q. The Edge Moor Bridge Works, of Edge Moor, Delaware. What did they sell?

A. Their work was largely bridge work.

Q. Railroad and highway bridge work or not?

A. Mostly railroad bridge work.

Q. Did they erect any steel buildings?

A. They did.

Q. In what territory?

A. Practically any territory of the United States.

Q. Did you meet them in competition outside the State of Delaware?

A. Yes.

Q. In the same territory as that in which these other companies were selling?

A. Yes, sir.

Q. The same character of material?

MR. SEVERANCE: When you say "you," do you mean McClintic Marshall, or the Shiffler Bridge Company?

MR. DICKINSON: He is referring to the Shiffler Company. Instead of "you" say "Shiffler," just make my question read that way.

MR. SEVERANCE: It is better to let the witness do the testifying.

THE WITNESS: Let me make myself straight. I understand that I am testifying both as to the Shiffler Company and McClintic Marshall Company, and that my answer applies to which ever one I was connected with during the time to which this question refers.

MR. SEVERANCE: But it did not refer to any time.

MR. DICKINSON: Yes, I beg your pardon; all these questions refer to the time these companies were taken into the American Bridge Company.

MR. SEVERANCE: But he did not represent both of those companies at that time.

MR. DICKINSON: Wait a minute. At the time these concerns were taken into the American Bridge Company, you were with the McClintic Marshall Company?

THE WITNESS: Yes.

MR. DICKINSON: State whether or not at that time they were competitors with each other in the several products and in the territory that you have hitherto described in your answers.

MR. LINDABURY: Every one of these? You are asking as to all of these?

MR. DICKINSON: Severally, in respect to his answers as to the different companies.

MR. LINDABURY: But he said some of them sold in the east and others only in the west. Those that sold in the West could not have been competitors in Delaware, then.

MR. DICKINSON: I am simply trying to correct my expression in the question I put, when I said, "you," instead of naming the company or companies.

MR. LINDABURY: I did not understand exactly as to the time he was with McClintic Marshall Company.

MR. DICKINSON: He was with the Shiffler Bridge Company from 1888 up to about three months before the American Bridge Company was formed.

MR. LINDABURY: I had not heard that.

By MR. DICKINSON:

Q. About three months before the American Bridge Company was formed the McClintic Marshall Company was

formed and you have been with that concern ever since. Is that correct?

A. That is correct; yes, sir.

Q. There seems to be some misunderstanding between counsel as to your answers to certain interrogatories, when I said "you," instead of designating the company with which you were associated at the time. Now I will ask you to state whether or not prior to your going with the McClintic Marshall Company, and during the year next preceding that, these concerns which you have mentioned by name here as having been taken over by the American Bridge Company, and as manufacturing the material which you have hitherto specified, and as having sold in the territory you have hitherto specified, were in competition with the Shiffler Company and with each other in the various products which you have named?

A. They were.

Q. After you left the Shiffler Bridge Company, during the time intervening between that time and the formation of the American Bridge Company, state whether or not these concerns that went into the American Bridge Company were competitors in the United States in Interstate Commerce, in the sale of the various products which you have described them as having produced. Do you understand that question?

A. I think I do.

MR. DICKINSON: I will ask the stenographer to repeat it.

(The question was repeated by the stenographer as above recorded.)

THE WITNESS: They were.

MR. LINDABURY: With each other, all of them? I do not think he understands.

MR. DICKINSON: I think he does. Do you understand the question?

THE WITNESS: I understand you have asked the question whether or not from the time we left the Shiffler Bridge Company until the formation of the American Bridge Company, these named concerns were competitors of each other throughout the United States.

MR. DICKINSON: In the several products which you have stated.

THE WITNESS: My answer is that they were.

MR. SEVERANCE: But that is contradictory to another answer the witness made, when he said that some competed in the west and some only in the east.

By MR. DICKINSON:

Q. Were they or were they not competitors in the territory where you have described them in your previous answers as having sold?

A. They were.

Q. Mr. Marshall, name the principal concerns, either corporations or partnerships, which, at the time the American Bridge Company was formed, were not absorbed by the American Bridge Company, and were competitors of these various concerns that were taken over by the American Bridge Company, in the building of bridges and structural buildings.

MR. SEVERANCE: You mean competitors of these that you have named?

MR. DICKINSON: Yes. Do you understand the question?

THE WITNESS: I understand the question to be for me to name the bridge companies which were not taken over by the American Bridge Company, but which were competitors of the concerns that were taken over by them.

MR. DICKINSON: The principal ones, yes.

THE WITNESS: The principal ones are the Pennsylvania Steel Company, the Phoenix Iron Company—the Phoenix Bridge Company, I guess it is. The King Bridge Company—

By MR. DICKINSON:

Q. Do you recall the Passaic Steel Company?

A. I would not recall them under the important ones.

Q. Were any of these concerns you have named as large as either the Pencoyd or the Keystone or Edge Moor or the Lassig Bridge & Iron Works?

A. Were they large?

Q. As large as those?

A. I think these last you named were larger than any of the ones I have named.

Q. Do you know what was the capacity of the Phoenix

Bridge Works at the time the American Bridge Company was formed?

A. I think it was about 25,000 tons.

Q. Mr. Marshall, do you know approximately what was the capacity of the Passaic Steel Company at the time of the formation of the American Bridge Company?

A. About 12,000 tons.

Q. Mr. Marshall, did you know of a concern called the Raritan Structural Steel Company of Raritan, New York, as a competitor in 1901, or previous thereto, in the construction of bridges or iron and steel buildings?

A. I never heard of them.

Q. You never met them in any of that territory as competitors?

A. Never.

Q. I will ask you the same question about the Riter-Conley Company of Pittsburg, Pennsylvania.

A. They were competitors.

Q. In 1900 what did they make?

A. The Riter-Conley Company?

Q. Yes, sir.

A. Oh, they had a very extended variety of products. They made bridges, buildings, oil tanks, boilers, gas holders; all sorts of plate steel work.

Q. They made, as I understand you, other things besides bridges and structural material?

A. Yes, sir.

Q. I notice in the Iron & Steel Works Supplement for 1903, which has already been used by counsel for the defendants, that the Riter-Conley Company is there quoted as having a capacity of 100,000 tons. State whether or not that 100,000 tons represents only the capacity in bridge work and structural work, such as you have described, in which the Company in which you are engaged and these other companies, were competitors in interstate commerce.

MR. SEVERANCE: If he knows. He cannot guess at it. The witness understands he must not testify to anything that he does not know.

A. I will answer the question by saying that I do not know

what the 100,000 tons represents, but I do know that their capacity for structural steel work and bridges was not over 25,000 tons.

By MR. DICKINSON :

Q. In the same supplement for 1903, the McClintic Marshall Construction Company is put down as having a capacity of 85,000 tons. Did the McClintic Marshall Construction Company have a capacity of 85,000 tons in bridge and structural work such as you have described in which your company was in competition with these other companies in the years 1900 or 1901?

A. The capacity of the McClintic Marshall Construction Company for the year 1900 was a little less than 18,000 tons.

Q. And in 1901 what was it?

A. In 1901 it was a trifle more than that. I do not recall exactly. I can give you the exact figures if you wish to have me refer to data.

Q. In the same supplement the West Point Foundry, J. B. and J. M. Cornell, 26th Street and 11th Avenue, New York City, works at Cold Spring, railroad and highway bridges and steel buildings, annual capacity, 50,000 tons. State whether or not in the year 1900 that concern had a capacity of 50,000 tons in the character of work which you have described in which these several concerns that we have named that went into the American Bridge Company were competitors in interstate commerce.

MR. SEVERANCE: If he knew.

MR. DICKINSON: He has been reminded enough to answer if he knows. The witness is under oath and he is an intelligent man. I am not asking him for anything he does not know.

MR. LINDABURY: Could this witness know of his own knowledge the capacity of all these 300 concerns?

MR. DICKINSON: I am not going to ask him about 300. I am asking him for those he does know, and it is for the witness to state. He says he was a competitor of these concerns and met them in Interstate commerce.

MR. SEVERANCE: He has not mentioned this one.

MR. DICKINSON: He was a competitor, he said, Mr. Sever-

ance, of the people who competed generally in that class of work.

Read the question to the witness; and of course I do not want you to answer anything that you do not know approximately, and you can make your answer just as full and explanatory as you please, Mr. Marshall.

MR. LINDABURY: We do not want answers based on information obtained at a statistical or some other kind of an association that Mr. Colton has been attending.

MR. DICKINSON: No; I am not asking for that.

By MR. DICKINSON:

Q. Did you have any statistical association in the year 1900?

A. No, sir.

Q. Or 1901?

A. No, sir.

Q. Then you are not expected to base your answer on any statistical information acquired as of subsequent years.

(The question referred to was read by the stenographer as recorded).

MR. LINDABURY: I object to that further as leading. If you desire to get the real recollection of this witness, he ought to be asked what the capacity of these concerns was without having some statistical information read to him, and without being asked whether that is correct.

MR. DICKINSON: It is just as competent for him to state, if he knows, that they did not have a capacity of that size as it is for him to state if he knows the actual capacity they did have.

MR. LINDABURY: I do not agree to that at all.

MR. DICKINSON: Well, you have recorded the objection, and we will have to abide by it.

By MR. DICKINSON:

Q. Now, Mr. Marshall, what is the answer?

A. I do not know what the capacity of the Cornell Works was, but I know they did manufacture—

MR. LINDABURY: I object. The question is answered.

By MR. DICKINSON:

Q. You can go on with your answer.

A. What I know of the Cornell Works is that they manufactured and sold a great many cast iron columns, which is a foundry product, but whether or not that capacity is included in that tonnage given I do not know.

Q. State whether or not the J. B. and J. M. Cornell concern were competitors, in 1901, in interstate business in bridge and structural work, and if so, to what extent?

A. Their competition, as far as my experience goes, was confined to the east, largely, in the vicinity of New York.

Q. And in 1900?

A. Yes, sir; in 1900.

Q. In what were they competitors?

A. Principally building work, office building work, and the like.

Q. Were they competitors in bridge work?

A. I never met them in bridge work.

Q. State whether or not, at that time, in that class of work they were a large or small concern.

MR. SEVERANCE: That is merely speculative. I object to that as asking for a conclusion. He might call a concern a large concern that the Court would not think as large. You had better give it in tons.

Q. Do you know, approximately, what their capacity was?

A. I am not familiar with the capacity of the Cornell plant. The only experience we had with them in competition was on building work in the vicinity of New York.

By MR. LINDABURY:

Q. Might I ask who the witness means by "we" in connection with this testimony as the Cornell concern. Which of the two concerns did you mean when you said "we"?

A. Both, the Shiffler Bridge Company, and the McClintic Marshall Construction Company.

Q. Did the Shiffler Company meet them in competition here?

A. Yes, sir.

By MR. DICKINSON:

Q. On page 16 of the supplement I find "Scaife, William B. & Sons Company, Railroad and Highway Bridges, and Iron and Steel Buildings, also built tanks, stacks, turntables, car trucks, etc., annual capacity 30,000 tons." State whether or not tanks, stacks, turntables and car trucks were included in any way in the competition which you have described as having existed between the Pencoyd Works and the other concerns which were taken into the American Bridge Company in 1900?

A. The only product that you named there as being a competitive product is railroad turntables.

Q. And these other products which are included in those 30,000 tons, with the exception of the one named by you, were not in that competition at all?

A. No, sir.

Q. Do you know what was the fabrication capacity, in the competitive things of which we have been speaking, bridge and structural business, of that concern in 1900?

A. Not exceeding 10,000 tons a year.

Q. On page 12 of that supplement I find "The Fletcher & Crowell Company, of Portland, annual capacity 1,000 tons." State whether or not you knew of that concern as competing in 1900, or previous thereto, with the Shiffler Company, in the territory which you have described?

A. I never heard of them.

Q. I also find in this supplement the following "Megquier & Jones Company, of Portland, Railroad and Highway Bridges, Iron and Steel Buildings, capacity 3,000 tons." State whether or not you met them and knew of them as a competitor in that business, in interstate commerce?

A. I never heard of them.

Q. Take the Eastern Bridge & Structural Company of Worcester, "railroad and highway bridges, iron and steel buildings, annual capacity 3,000 tons." State whether or not you met and knew of them as a competitor in any of that territory in the competition which you have described?

A. I think I have heard of them, but we never met them in competition, as I recall.

Q. The Hawkins Iron Works of Springfield, annual capacity 4,000 tons. Were they competitors?

MR. LINDABURY: I object to this series of questions in which you are giving the witness the capacities as stated, of these companies. If you want to get what information he has I suggest that you put the question in such a way that it neither leads nor informs him as to your desired answer.

MR. DICKINSON: I think you led him, did you not?

MR. LINDABURY: I was cross-examining him.

MR. DICKINSON: But you brought that out as original matter and made the witness your witness.

MR. LINDABURY: No. I was cross-examining him upon your direct examination. We had that out the other day, Judge.

MR. DICKINSON: You are a little fastidious, I think; but I am going to try and meet your wishes in the matter. Read the objection, please.

(The stenographer read the objection as above recorded.)

MR. DICKINSON: For fear my question may have suggested the answer I desired I will not require him to answer that question. I will proceed to the next one and try to formulate it in a way that will be beyond criticism.

By MR. DICKINSON:

Q. The Norton Bridge Works of Springfield: Did you or did you not know of them as a competitor in bridge and structural work in interstate commerce in 1900, within any of the territory you have described? All of these questions are as of 1900 or prior thereto.

A. No.

Q. Take the Springfield Construction Company of Springfield. State whether or not in 1900 or prior thereto you knew of them or met them as a competitor?

A. I did not.

Q. When I say "you" I mean the company which you represented at that time. You understand that, do you?

A. Yes, sir.

Q. Take the Buffalo Steel Company, of Buffalo, and answer the same question as to that.

A. I have heard of them. I do not recollect whether it was prior to or after that time.

Q. Answer the same question, please, as to the Groton Bridge Company.

A. I have heard of them.

Q. That company was taken over by the American Bridge Company, was it not?

A. I think so.

Q. Will you answer the same question as to the Lane Bridge Company, and state whether or not you met them or knew of them as a competitor in bridge and structural work in 1900 and previous thereto in any of the territory you have described?

A. I did not.

Q. Take the Owego Bridge Company, of Owego, and answer the same question as to them?

A. I have heard of them.

Q. Did you meet them as a competitor in any of that kind of work?

A. Not in any particular case that I can recall.

Q. Now please answer the same question as to the Rochester Bridge & Construction Company of Rochester?

A. I did not know them.

Q. Will you answer the same question, please, as to the Jackson Architectural Iron Works, of New York?

A. I have heard of them only in connection with cast iron work.

Q. But you have not heard of them in bridge and structural work such as you have described, in which these companies were competitors?

A. No, sir.

Q. Levering & Garrigues Company, New York?

A. I know of them.

Q. State whether or not that is a concern which you met or knew of as a competitor in that territory in that class of work, in the year 1900?

A. Levering & Garrigues in 1900 were simply contracting agents; they had no shop.

Q. And if they had one in 1903, it started up afterwards?

A. Yes, sir.

MR. LINDABURY: That is really leading. See if he knows anything about it.

By MR. DICKINSON:

Q. Well, you do say that they were not competitors in that business as bridge and structural builders in 1900?

A. They were competitors in this way; that they contracted for competitive business and then sub-let it, to be manufactured by some other concern.

Q. But without any productive capacity of their own?

A. Without any productive capacity.

Q. I say without any productive capacity of their own?

MR. LINDABURY: You are testifying now, Judge.

By MR. DICKINSON:

Q. Did they have any works of their own for fabricating?

A. They did not.

MR. LINDABURY: They were merely competitors?

THE WITNESS: They were the worst kind of competitors.

By MR. DICKINSON:

Q. In what way?

A. They were brokers. They would take the chances on getting a contract, and then go around and get any fabricator, whoever they could get to do the work most cheaply.

MR. LINDABURY: That would demoralize any business, would it not?

THE WITNESS: Oh, that is terrible.

By MR. DICKINSON:

Q. Did you know the John A. Roebling's Sons Company of Trenton?

A. I knew of the firm; not as competitors.

Q. In what business were they engaged?

A. Largely manufacturing wire rope, I believe.

Q. Did they make any class of bridges?

A. Not that I know of. They made cables for suspension bridges.

Q. Were they at that time competitors in the construction of bridges of the character you have described these other concerns as constructing, and constructing material for the building of large buildings?

A. They were not.

MR. LINDABURY: Judge, they have some reputation, you must remember, in connection with the Brooklyn Bridge.

MR. DICKINSON: Yes, and some in connection with pools.

MR. LINDABURY: Well, I do not know whether the Brooklyn Bridge is a pool product or not, but it is a Roebling product.

MR. DICKINSON: That was a long time ago.

MR. LINDABURY: We are talking about ancient history now.

By MR. DICKINSON:

Q. The Allentown Rolling Mills of Allentown. State whether or not, in 1900, and previous thereto, you met them as competitors.

A. I heard of them, but they were no competitors of ours.

Q. Were they building bridges and large structural buildings at that time?

A. Not to my knowledge.

Q. State whether or not you had a general knowledge of people who were doing that kind of work?

A. I thought I had.

Q. You knew of these other concerns as competitors, that you mentioned as having gone into the American Bridge Company?

MR. LINDABURY: I object to that as suggestive and leading, and in violation of the promise counsel made as to the course he would pursue.

By MR. DICKINSON:

Q. Those concerns went into the American Bridge Company that we have named as doing the same class of business that you were doing, did you or not know them as competitors.

A. I did.

MR. SEVERANCE: He has stated that four times.

MR. DICKINSON: I am glad it is impressed on your memory.

MR. LINDABURY: I call your attention to the fact that the issue is not whether they competed with his concern, but whether they competed with the American Bridge Company.

MR. DICKINSON: Yes, and he competed with the others, and they were in the common business of competition.

By MR. DICKINSON:

Q. Take Ballinger Company of Pittsburg. State whether or not you knew of them in that line of work as competitors in 1900.

A. I do not recall just when they came into existence. I know of them now, and I do not recall whether or not they were in existence prior to 1900.

Q. Or during 1900?

A. I do not recall.

Q. The Dauphin Bridge & Construction Company, Philadelphia? State whether or not in 1900 and previous thereto you met or knew of them as competitors in structural work in interstate commerce.

A. I have heard of them, but I never considered them as a competitor.

Q. Did they bid on the work you were bidding on or not?

A. Not that I remember.

Q. Heyl & Patterson of Pittsburg. State whether or not you met them in 1900 or previous thereto as competitors in the kind of work in which you were engaged, in which you have described these other concerns as being engaged, the concerns which went into the American Bridge Company.

A. We met them as customers.

Q. Not as competitors?

A. Not as competitors.

MR. SEVERANCE: Were they brokers also?

THE WITNESS: They manufacture coal-conveying machinery largely.

By MR. DICKINSON :

Q. The Fort Pitt Bridge Works of Pittsburg. If you know, state approximately what was the capacity of that concern in the year 1900 in railroad and highway bridges and iron and steel buildings.

A. My recollection is that their capacity was about 12,000 tons.

Q. The Pittsburg Steel Construction Company of Allegheny. State whether or not in the year 1900 or previous thereto you knew of that company's being a competitor in the construction of bridges and iron and steel buildings.

A. I know of them now, but I do not recall when they came into existence.

Q. Do you know whether or not you met them as a competitor in 1900 or previous thereto?

A. I do not know. My recollection is that they are a recent organization, very recently formed.

MR. LANDABURY: It would require less care and study, Judge, if you would simply take the whole list and ask him about them.

MR. DICKINSON: I do not care about the study and care it requires. I appreciate your sympathy, but it is thrown away.

By MR. DICKINSON :

Q. The Schuylkill Bridge Works; Louis F. Shoemaker & Company, Philadelphia. State whether or not in 1900 and previous thereto you met or knew them as competitors in bridge and iron and steel buildings.

A. At that time they were another set of brokers.

Q. Not manufacturers or fabricators at all?

A. No, sir.

Q. The Smith Manufacturing Company of Waynesboro. Without repeating all of the question, you understand the question?

A. I never heard of them.

Q. You never knew of them as a competitor at that time?

A. No, sir.

Q. The York Bridge Company, York, Pennsylvania.

A. I did not know them.

Q. In the sense that I speak of——

MR. LINDABURY: He did not know them at all.

MR. DICKINSON: I am asking him what he means by the answer.

THE WITNESS: I do not know them as competitors.

By MR. DICKINSON:

Q. Lauer & Harper Company, Westport. State whether or not you knew them as competitors in that business.

A. I never heard of them.

Q. The West Virginia Bridge & Construction Company, Wheeling, West Virginia.

A. They were organized after 1900.

Q. Chattanooga Bridge Company, Chattanooga.

A. I did not know them.

Q. Do you understand my question?

A. Yes; we never met them in competition.

Q. Converse Bridge Company, Chattanooga?

A. We never met them in competition.

Q. Nashville Bridge & Construction Company, Nashville, Tennessee?

A. We never met them in competition.

Q. Carolina Bridge & Steel Company, Burlington, North Carolina?

A. Never met them.

Q. Lombard Iron Works & Supply Company, Augusta?

A. Never heard of them.

Q. Southern Bridge Company, Birmingham?

A. Never heard of them.

Q. Adams Brothers Company, Findlay, Ohio?

A. I never heard of them.

MR. LINDABURY: Pardon me, but is the witness answering as of to-day?

MR. DICKINSON: No, the question is as to 1900.

MR. LINDABURY: I only wanted to know whether he meant to answer as to that time or as to now.

MR. DICKINSON: Repeating the question, my question is whether or not he knew of these companies or met them in 1900 or previous thereto, in competition, in bridge or struc-

tural work of the character he has described, these concerns that went into the American Bridge Company as doing.

MR. LINDABURY: I understood your question was that way.

By MR. DICKINSON:

Q. You understand that?

A. Yes.

MR. LINDABURY: But one or two of the phrases he used in answering indicated that he has not heard of these companies up to the present time.

By MR. DICKINSON:

Q. You are answering the question as I put it, are you not, Mr. Marshall?

A. Yes, sir. Generally when I answer "I never heard of them," it means I have never heard of them even to-day.

MR. LINDABURY: That is what I thought.

THE WITNESS: And where I have answered that I do not know them or have not met them in competition, I mean I may have heard of them since, but never heard of them before.

By MR. DICKINSON:

Q. To avoid any confusion, try to answer the question, will you?

A. I will answer them all the same way.

Q. Yes; and answer them as of 1900 and prior thereto, and as competitors?

A. Yes, sir.

Q. The Brackett Bridge Company, Cincinnati?

A. I did not know them as competitors.

Q. As of the time now under discussion?

A. Yes, sir.

Q. Now, understand that, so as to avoid confusion.

A. Yes; I will try to confine all my answers to that.

Q. If you will answer yes or no, without qualification, we will understand it is an answer to that formula. Of course, you can make any answer you choose, but if you should answer

yes or no we would understand it is to this question I have put.

MR. LINDABURY: I think you had better let him answer as he pleases.

MR. DICKINSON: Very well; strike that out.

MR. LINDABURY: It is so leading.

By MR. DICKINSON:

Q. The Brackett Bridge Company, Cincinnati.

A. I did not know them as competitors.

Q. As of that time and previous thereto?

A. Yes, sir.

Q. The Brookville Iron Works, Brookville?

A. I did not know them as competitors.

Q. The Canton Bridge Company, Canton?

A. I have heard of them, and on rare occasions they were competitors.

Q. In 1900 or previous thereto?

A. Previous to 1900.

MR. LINDABURY: That has been understood, Judge.

MR. DICKINSON: I did not know whether you understood it.

MR. LINDABURY: Yes.

By MR. DICKINSON:

Q. The Champion Bridge Company, Wilmington?

A. Wilmington, where?

Q. Ohio.

A. I did not know them as competitors.

Q. Forest City Steel & Iron Company, Cleveland, Ohio?

A. I did not know them as competitors.

Q. The Garry Iron & Steel Company, Cleveland, Ohio?

A. I did not know them as competitors.

Q. Interstate Engineering Company, Cleveland, Ohio?

A. I did not know them as competitors.

Q. Iron Substructure Company, Columbus, Ohio?

A. I did not know them as competitors.

Q. The King Bridge Company, Cleveland?

A. They were competitors.

Q. Massilon Bridge Company, Massilon, Ohio?

A. They were competitors.

Q. National Iron & Wire Company, Cleveland?

A. I did not know them as competitors.

Q. The Oregonia Bridge Company, Oregonia?

A. I did not know them as competitors.

Q. The Rarig Bridge Company, Columbia?

A. I did not know them as competitors.

Q. Riverside Bridge Company, Wheeling, West Virginia?

A. I know of them now, and it is my recollection that they started since 1901.

Q. The Rodgers Iron Company, Springfield?

A. I did not know them as competitors.

Q. The Stewart Iron Works, Cincinnati?

A. I did not know them as competitors.

Q. The Variety Iron Works, Cleveland?

A. They were competitors.

Q. Anderson Bridge and Scraper Company, Anderson?

A. I did not know them as competitors.

Q. Attica Bridge Company, Attica, Indiana?

A. I did know them as competitors.

Q. The Brown-Ketcham Iron Works, Indianapolis?

A. They were competitors.

Q. In what character of work?

A. Principally in the Central West.

Q. What character of work?

A. Principally in building work.

Q. Structural building?

A. Structural steel buildings.

Q. Elkhart Bridge Company, Elkhart?

A. I did not know them as competitors.

Q. Indiana Bridge Company, Muncie?

A. I did not know them as competitors.

Q. Indianapolis Bridge & Iron Works, Indianapolis?

A. I did not know them as competitors.

Q. Lafayette Plant at Lafayette?

A. I did not know them as competitors.

Q. Noelke-Richards Iron Works, Indianapolis?

A. They are of some importance at the present time, but

my recollection is that they were not competitors during 1900.

Q. I omitted the Newcastle Bridge Company, of Indianapolis. What about them?

A. I did not know them as competitors.

Q. Pan-American Bridge Company, Newcastle?

A. I did not know them as competitors.

Q. Thatcher A. Parker, Terre Haute?

A. I did not know them as competitors.

Q. Rochester Bridge Company, Rochester?

A. I did not know them as competitors.

Q. Vincennes Bridge Company, Vincennes?

A. I did not know them as competitors.

Q. Wabash Bridge & Iron Works, Wabash?

A. I did not know them as competitors.

Q. Winamac Bridge Company, Winamac?

A. I did not know them as competitors.

Q. The American Bridge Company, Philadelphia; two plants in Illinois: American plant and Lassig plant, both located in Chicago?

A. American Bridge Company?

Q. You know them, did you not?

A. I knew the American Bridge Company, New York, but when you said Philadelphia—

Q. That is the way it is here.

MR. LINDABURY: You have not answered whether they were competitors or not.

THE WITNESS: How is that?

By MR. DICKINSON:

Q. This is the American Bridge Company of Philadelphia, Pennsylvania, the way it is put down here, and for description of the plant it says "see page 10." Now, with your permission I will turn to page 10. That is one of the companies in the American Bridge Company. You knew that?

A. I knew the American Bridge Company.

Q. You knew that as a competitor too, did you not?

A. Yes, sir.

MR. LINDABURY: Before it was formed? You are speaking of a time anterior to its formation, you know.

By MR. DICKINSON:

Q. Chicago Bridge & Iron Company?

A. I know of them. They were competitors in a small way.

Q. In what character of work?

A. Principally bridge work. Their principal product is tanks.

Q. Decatur Bridge Company, Decatur, Illinois.

A. I did not know them as competitors.

Q. The Elizabeth Steel Bridge Works, Elizabeth, Illinois?

A. I did not know them as competitors.

Q. The Illinois Bridge & Iron Company, Sullivan?

A. I did not know them as competitors.

Q. The Illinois Bridge & Machine Company, Jacksonville?

A. I did not know them as competitors.

Q. The Joliet Bridge & Iron Company, Joliet?

A. I did not know them as competitors.

Q. The Kenwood Bridge Company, Chicago?

A. They were competitors in a small way.

Q. In what?

A. Principally building work.

Q. A. Lucas & Sons, Peoria?

A. I did not know them as competitors.

Q. Missouri Bridge & Iron Company, East St. Louis?

A. I did not know them as competitors. I knew of them, but not as competitors.

Q. North Works, Illinois Steel Company?

A. I knew of them as competitors.

Q. Chicago?

A. Yes, sir.

Q. Competitors in what?

A. That is part of the American Bridge Company.

MR. LINDABURY: Judge, you have led the witness into an error. That company never went into the Bridge Company.

MR. DICKINSON: I did not lead him into an error at all. He stated it.

MR. LINDABURY: But that went in—

MR. DICKINSON: He has made the statement without any suggestion on my part.

MR. LINDABURY: But get it right. The Illinois Steel Company did not go into the American Bridge Company.

MR. SEVERANCE: Did you mean to say that the Illinois Steel Company went into the American Bridge Company, or that both went into the Steel Corporation?

THE WITNESS: I mean to say the North Works of the Illinois Steel Company in their fabricating department were at that time—rather it is my understanding of it that their product now is part of the American Bridge Company's product.

MR. SEVERANCE: You are asked about 1900.

MR. LINDABURY: He does not mean that.

MR. DICKINSON: Let us see what he does mean.

MR. SEVERANCE: Judge Dickinson has told you repeatedly he wanted you to testify as to 1900. Is that true of 1900?

THE WITNESS: My answer, as far as the American Bridge Company is concerned—I do not know what processes of development they went through from the year 1900 up to the present time, but I do know that the Illinois Steel Company's North Works was a part of the Steel Corporation, and I am speaking now of the fabricating part of the Steel Corporation, whether it includes the American Bridge Company or whether it includes two or three other departments of the Steel Corporation—I am not attempting to separate them.

MR. SEVERANCE: You evidently have not been testifying to the matters the Judge was asking about, because he was asking you about 1900, and that was the year before the Steel Corporation was formed.

MR. DICKINSON: I have not asked about any concerns that went into the American Bridge Company except in a specific way.

MR. LINDABURY: But it is confusing.

THE WITNESS: I understand the Steel Corporation was not formed for a year after the American Bridge Company was formed.

MR. SEVERANCE: Please let the witness explain just what he does mean, because I am sure he wants to have it right.

MR. DICKINSON: What he means by what?

MR. SEVERANCE: That answer about the Illinois Steel Company going into the American Bridge Company.

MR. COLTON: It was not the Illinois Steel Company, it was the North Works.

MR. SEVERANCE: Let him explain what he means.

By MR. DICKINSON:

Q. Just explain what you meant by that?

MR. SEVERANCE: You had better ask him another question.

MR. DICKINSON: I did not ask him that.

MR. SEVERANCE: In order to straighten it out, I will ask you this question—

MR. DICKINSON: Never mind.

By MR. DICKINSON:

Q. Just state what you know, if anything, in regard to the works at Chicago going into or under the control of the Steel Corporation. If you know about it explain it, and if you do not know, so state.

A. The North Works, which I understand is a part of the Illinois Steel Company, did quite a business in fabricating, principally building work, and the Illinois Steel Company's North Works was a competitor in Chicago and the Western District for that class of work. The Illinois Steel Company's plant, I believe, did not go into the American Bridge Company until after the Steel Corporation was formed, but at the present time the capacity which was represented by the North Works of the Illinois Steel Company is a part of the American Bridge Company's capacity.

Q. The Springfield Bridge & Iron Company, Springfield?

A. I did not know them as competitors.

Q. Western Bridge Company, Chicago?

A. I did not know them as competitors.

Q. La Crosse Bridge & Steel Company, La Crosse?

A. I did not know them as competitors.

Q. Modern Steel Structural Company, Waukesha?

A. I knew of them and they were competitors in a small way.

Q. In what?

A. Principally building work.

Q. Wisconsin Bridge & Iron Company?

A. They were competitors.

Q. In what?

A. Bridges and buildings.

Q. The Minneapolis Steel & Machinery Company at Minneapolis?

A. I know of them. They are competitors in a small way. Whether or not they were in 1900, I do not know.

Q. You understand I am only asking you as to 1900?

A. I understand.

Q. The St. Paul Foundry Company, of St. Paul?

A. I did not know them as competitors.

Q. The Clinton Bridge & Iron Works, of Clinton?

A. I did not know them as competitors.

Q. The Des Moines Bridge & Iron Works of Des Moines?

A. I did not know them as competitors.

Q. Fair-Williams Bridge & Manufacturing Company, Ottumwa?

A. I did not know them as competitors.

Q. The Marshalltown Bridge, Boiler & Machine Shops?

A. I did not know them as competitors.

Q. The Banner Iron Works of St. Louis.

A. I did not know them as competitors.

Q. Stupp Brothers Bridge & Iron Company?

A. I did not know them as competitors.

Q. Missouri Valley Bridge & Iron Works, Leavenworth?

A. I knew of them.

Q. In what class of work?

A. It was principally bridge work. I do not believe they had a shop.

MR. SEVERANCE: Is that merely your opinion, or do you know?

THE WITNESS: That is just my opinion.

MR. SEVERANCE: I will object to that answer, because he does not know.

By MR. DICKINSON:

Q. Topeka Bridge & Iron Works?

A. I did not know them as competitors.

Q. The Wichita Works, of Wichita?

A. I did not know them as competitors.

Q. The Enid Works, Enid, Oklahoma?

A. I did not know them as competitors.

Q. The Fargo Bridge & Iron Company of Fargo?

A. I did not know them as competitors.

Q. The Puget Sound Bridge & Dredging Company, of title?

A. I did not know them as competitors.

Q. The Portland Bridge & Building Company, of Portland?

A. I did not know them as competitors.

Q. The Judson Manufacturing Company, of California?

A. I did not know of them as competitors.

Q. I will ask you whether there were concerns that made large work and iron work in the United States, of a local character, not engaged in interstate commerce.

A. There were quite a number of concerns whose work was purely local.

Q. In the statistics of this sort, what are included, if you will?

A. I do not know. I never saw any statistics or a publication of that kind that impressed me as being reliable.

Q. You do not know whether that is included in them?

A. I do not know whether that is included; no.

Q. What class of bridge workers are called fabricators? What class of shops and works are called fabricators?

A. It is pretty hard to make any clear distinction, because every man who works a piece of steel into a different shape in that in which he gets it is a fabricator.

Q. Shops and works which do that class of work are fabricators?

A. A country blacksmith is a fabricator.

Q. Any man that takes plain material and turns it into a form is a fabricator?

A. Every man that buys a beam from a rolling mill and chases a hole in it for use is a fabricator.

Q. Every shop or works that does any of that character of work is a fabricator, is it not?

A. Yes, sir; but not in a competitive sense, though.

Q. Mr. Marshall, what percentage of work described as large and structural work for the doing of which a concern is equipped, and which you have described as competing in

interstate commerce with your companies, or the companies with which you were, and with the American Bridge Company, the year 1900, was done by those concerns taken over by the American Bridge Company, and what percentage of competitive work of that character was left out of that combination?

MR. SEVERANCE: The witness clearly could not know that except by reference to some compilation of statistics, and he said a moment ago that he placed no reliance upon any such compilations, and that he had never seen any statistics which were prepared that he regarded as reliable, and his answer must necessarily be a mere guess or speculation, and I further object to it as incompetent.

By MR. DICKINSON:

Q. Based upon your knowledge acquired in the business, in competition with concerns that come in competition with those concerns with which you were connected, please answer the question to the best of your knowledge and belief.

MR. SEVERANCE: I object to that, because the question is so entirely deficient in its terms; it does not contain all the elements; and I repeat, as part of the objection, the objection which I made as to the previous question which was not answered.

By MR. DICKINSON:

Q. Will you answer the question, please?

A. It was my opinion at the time the American Bridge Company was formed that they absorbed about 75 per cent. of the competitive business.

Q. Of the character which you have mentioned?

A. Yes, sir.

Q. That is bridge and structural work?

A. Bridge and structural work.

Q. State whether or not, before the formation of the United States Steel Corporation, your concern did any work for and got any contracts from the American Tin Plate Company?

A. We did.

Q. Have you since?

A. No, sir.

Q. How about the Carnegie Company?

A. We did work for the Carnegie Steel Company.

Q. Have you had any since?

A. No, sir.

Q. How about the National Tube Company?

A. I do not recall as to the National Tube Company, whether we did anything for them or not.

Q. Do you know where that class of work which you got in the American Tin Plate Company and from the Carnegie Steel Company previous to the formation of the United States Steel Corporation now goes?

A. It goes to the American Bridge Company.

Q. State whether or not in the fabricating plants of the American Bridge Company are generally connected with, or separated from, the rolling mills that produce the material that is worked up in such fabricating plants.

A. I think they are very largely separated from the rolling mills.

Q. In regard to such bridge work as that for which the companies you have mentioned were in competition are you in competition with the American Bridge Company, and have you been in recent years, since its formation?

A. We have.

Q. Take the year first preceding this, I mean the twelve months, and state whether or not your mill has been running full capacity on that character of work.

MR. LINDABURY: I object to that as immaterial.

A. It has not.

MR. DICKINSON:

Q. State whether or not you know whether the American Bridge Company has been running to the full capacity.

MR. LINDABURY: Objected to as immaterial.

A. All the information I have in reference to the American Bridge Company is what I can gather from the United States Steel Company's annual reports, and basing their output last year with that of the year previous, they got out 88 cent.

By MR. DICKINSON :

Q. Of what?

A. Their last year's output was 88 per cent. of the year before. What their contracts taken on were I do not know.

Q. You mean to say that for last year they got 12 per cent. less than the year before?

A. The output as given in the Steel Company's report for the year 1911 is 88 per cent. compared with the year 1910.

Q. 88 per cent. of their own production, you mean?

A. Their own production, yes.

Q. The question I intended to ask you was this: What proportion of the business done in the United States, in that character of work, has been done by the American Bridge Company, and what proportion by those who were competitors in that class of work?

MR. SEVERANCE: I object to that for the reason that the witness cannot answer that by reference to statistics, and he has already stated that he has not seen any statistics which he regards as reliable.

MR. DICKINSON : Maybe the witness thinks he can answer it. We will see.

A. I understand your question to mean this: What proportion of the business the American Bridge Company contracted for—

By MR. DICKINSON :

Q. Of the class of work for which you and the companies in like business compete with the American Bridge Company.

MR. SEVERANCE: The same objection to that.

A. The only answer I can make to that is what I can gather from my general information of the business from month to month, and I could give no absolute figures. If you want my opinion——

By MR. DICKINSON :

Q. Give the approximate figures to the best of your ability.

MR. SEVERANCE: The same objection.

MR. LINDABURY: I understand the witness has nothing but opinion and has no figures at all.

MR. DICKINSON: The record will show what the foundation his answer is.

MR. LINDABURY: Yes, the record will show that, but I do think you ought to ask questions that you would not think asking if this testimony were taken directly before a judge.

MR. DICKINSON:

Q. You have been familiar with the business?

A. Yes.

Q. And you meet these people in competition?

A. Yes.

Q. It is part of your business to know what contracts are over the country?

A. Yes.

Q. And what concerns get them?

A. Yes, sir.

Q. Now, based upon your general knowledge of the business of the country that way, please answer that question to the best of your ability.

MR. SEVERANCE: The same objection.

A. I think they have contracted during the last year for approximately 70 per cent. of all the business that was left.

MR. DICKINSON:

Q. In business of that character?

A. Yes, sir.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 1 o'clock p. m.)

AFTER RECESS.

C. D. MARSHALL,

the witness under examination when the recess was taken, resumed the stand.

CROSS EXAMINATION,

By MR. SEVERANCE:

Q. Mr. Marshall, what year did you say you went into the bridge and structural steel business? When did you first engage in the business?

A. In the fall of 1888.

Q. And you were never with any company until you went with the Shiffler Company?

A. No, sir.

Q. And in what capacity were you employed by that company?

A. I started in as a draftsman and I ended as secretary and engineer in charge of the contracting.

Q. Then you had experience in all the branches of their business?

A. Yes, sir.

Q. Both bridge building and structural steel work?

A. Yes, sir.

Q. And it was in 1900, I believe, that you went into business with your present firm or corporation?

A. Yes, sir.

Q. Who were the original parties in the McClintic Marshall Company?

A. Mr. A. W. Mellon, Mr. R. B. Mellon, Mr. Morse, Mr. R. N. Wick, Mr. McClintic and myself.

Q. What time in the year 1900 was that organization formed?

A. February 1, I believe; about the first of February.

Q. 1900?

A. I think maybe the charter was taken out in March. We left the Shiffler Bridge Company the first day of February, 1900, and immediately started the McClintic Marshall Con-

ruction Company. I do not think the charter for the McIntie Marshall Construction Company was secured until me time in March.

Q. Is that the same corporate name you are still doing business under?

A. Yes.

Q. The same organization?

A. Yes, sir.

Q. What was your capital stock when you started?

A. Five or ten thousand dollars.

Q. Five thousand or ten thousand dollars?

A. Just nominal.

Q. Was that contributed by all the gentlemen of whom you have spoken?

A. No. I do not remember just now how it was divided up, but the effective organization was contributed to by all of the men I have named.

Q. You had a nominal capitalization. Did you immediately, or very shortly thereafter, increase it to what you would call an effective amount?

A. Yes, sir.

Q. And what was the capital at that time, after you had increased it?

A. I do not recall what it was. I think it was about \$300,000.

Q. About \$300,000?

A. Yes.

Q. What is your present capitalization?

A. \$5,000,000.

Q. Immediately upon organizing your company in 1900 you became a competitor of these companies that you have mentioned afterwards acquired by the American Bridge Company?

A. Yes, sir.

Q. And you have been continuously a competitor of the American Bridge Company since its organization, have you not?

A. Yes, sir.

Q. And your capitalization has grown from \$300,000, at the commencement of that competition, to \$5,000,000?

A. Yes, sir. The amount of capital stock issued, though, is only \$3,500,000.

Q. \$3,500,000, then?

A. Yes.

Q. You have grown to be about twelve times as large in your paid up capitalization as you were in 1900?

A. Yes, sir.

Q. You stated to Judge Dickinson this morning that your output in 1900 was about 18,000 tons, if I recall?

A. Yes, sir.

Q. What was your output for the several years since 1900 down to date, if you can tell?

A. Do you want it for each year?

Q. Yes; if you please.

MR. LINDABURY: He has got it.

THE WITNESS: I have not got it for 1901. In 1902 it was \$52,845.

By MR. SEVERANCE:

Q. That is, you increased from 18,000 tons in 1900 to 52,000 tons in 1902?

A. Yes, sir.

Q. When the American Bridge Company, your most formidable competitor, was something over a year old?

A. Yes, sir.

Q. Go on, now, and give us the rest of the years.

A. 1903 was 58,000. 1904 was 45,000.

Q. That was a bad year in the steel business generally, was it not—1904?

A. Yes, sir.

Q. Everybody's output fell off that year, did it not?

A. Yes, sir.

Q. Go on.

A. 1905 was 67,000. 1906 was 111,000. 1907 was 111,000. 1908 was 80,000.

Q. That was another bad year in the steel business, after the panic of 1907?

A. Yes, sir.

Q. And that year you had only about four times as much business as you did in 1900, 80,000 as against 18,000?

A. Yes, sir.

Q. Go ahead.

A. 1909 was 87,000. 1910, 133,000. 1911, 161,000.

Q. In a general way what was the class of business you have been engaged in?

A. Principally, railroad bridges, mill and factory buildings and office buildings, storage buildings.

Q. Structural steel buildings?

A. Structural steel work in general.

Q. Now from whom have you purchased your raw material during that period? From what different manufacturers of steel?

A. Oh, practically everybody who rolled steel.

Q. Will you kindly name them?

A. Carnegie Steel Company, Jones & Laughlin, Phoenix Iron Company, Eastern Steel Company, Cambria, Lukens Iron & Steel Company, Worth Brothers.

Q. Pennsylvania Steel Company?

A. No, sir; I do not think we have ever bought anything from the Pennsylvania Steel.

Q. Maryland Steel?

A. No, sir.

MR. LINDABURY: Had he finished his answer?

by MR. SEVERANCE:

Q. Have you given us all of them?

A. That is all the important ones. There is the Carbon Steel Company and United Steel Company, of Canton, and maybe some others that I do not recall.

Q. Shiffler Steel Company?

A. No, sir.

MR. REED: They do not roll.

by MR. SEVERANCE:

Q. Illinois Steel Company?

A. No, sir.

Q. Bethlehem Steel Company?

A. Yes, sir.

Q. You have been a customer, then, of all the large steel manufacturers except the Pennsylvania and the Maryland?

A. Yes, sir.

Q. Lackawanna, have you bought from them?

A. In a very small way.

Q. You have not been attached, then, to any particular manufacturer?

A. No, sir.

Q. But you bought in the market where you could do the best as you thought at the time, is that right?

A. Yes, sir.

Q. Can you tell me in what parts of the United States you have sold your products?

A. Practically every part of the United States.

Q. Do you sell on the Pacific Coast?

A. Yes, sir.

Q. In what States?

A. Washington, Oregon.

Q. California?

A. California.

Q. Also in the Central States and the Mountain States?

A. In a very small way.

Q. Is the Colorado Fuel & Iron Company engaged in this same business?

A. No, sir; not to my knowledge.

Q. Is there any company in that region engaged in that business?

A. Not any of any importance.

Q. There are a great many structural steel or fabricating plants not of large size, but who do business in different parts of the country, are there not, who do business in their own neighborhood?

A. Yes, sir.

Q. And do you sometimes meet their competition?

A. Oh, very rarely.

Q. But their output would have to be considered in determining the total output of structural steel or bridge business in the country, would it not?

A. I suppose it would.

Q. And as to the extent of that output except in cases where you had yourself been brought in competition with them, you are unable to give any testimony?

A. No, sir.

Q. Do you build highway bridges or only railroad bridges?

A. Highway bridges of large tonnage.

Q. Will you give some examples of large highway bridges that you have built during this time that you have been in competition with the American Bridge Company?

A. Well, we built a large viaduct in Cleveland, we built a combination highway and railroad bridge at Kansas City across the Missouri River.

Q. When did you build that bridge?

A. Just finished last year.

Q. What is the tonnage of that bridge, do you remember?

A. About 17,000 tons.

Q. That was a large bridge, was it not?

A. Yes, sir.

Q. How large was this viaduct, in Cleveland?

A. I think there were eight thousand or nine thousand tons in it.

Q. Can you give some other large highway bridges?

A. I do not recall them just offhand.

Q. Can you give any examples of large structural steel buildings that you have built?

A. Yes.

Q. Will you give some of them, stating the cities in which they are located?

A. We built the Marshall Field building in Chicago; we built the office building at the Grand Central Station here in New York.

Q. This Grand Central Station up here?

A. Yes, sir.

Q. You built that within the last two or three years?

A. No; I think it was three or four years ago.

Q. Yes. Go ahead.

A. And we built the building for the Union Steel Company at Denora, Sharon Steel Company at Sharon.

Q. Can you not give some more office buildings here in New York or in Chicago?

A. No, sir; I cannot recall them just offhand.

Q. But you have done a lot of them?

A. Yes.

Q. A great many, have you not?

A. Not what you would call a great many office buildings.

Q. What have you built?

A. We have built a great many factory buildings and rolling mill buildings and railroad bridge work.

Q. I am coming to the railroad bridge work in a moment. But you have built a great many large factory buildings?

A. Yes, sir.

Q. Where have they been located?

A. All over the United States.

Q. You said you had with you in business Mr. A. W. Mellon, and what is the other Mr. Mellon's name?

A. Mr. R. B.

Q. What is their business?

A. They are bankers.

Q. Are they in any other business besides banking?

A. I think they are interested in a large number of businesses.

Q. What other business are they in?

A. I am not familiar with what businesses they are in, only incidentally.

Q. Now, coming to the question of railroad bridges if you cannot give us any more examples of factory buildings—

MR. DICKINSON: He has not said he could not give more examples.

MR. SEVERANCE: He says he cannot recall them.

By MR. SEVERANCE:

Q. Can you give us any other examples?

A. I may if I think long enough.

Q. Can you, offhand, without stopping to think?

A. No.

Q. That is what I understood you to say. Coming to the question of the various railroads that you have built bridges for, have you built bridges for the Baltimore & Ohio?

A. Yes, sir.

Q. Have you built for the Pennsylvania?

A. Yes, sir.

Q. Have you built bridges for the Northern Pacific?

A. Yes, sir.

Q. For the Great Northern?

A. Yes, sir.

Q. For the Rock Island?

A. Yes, sir.

Q. For the Western Pacific, that runs from Salt Lake to San Francisco?

A. Yes, sir.

Q. For the Missouri Pacific?

A. Yes, sir.

Q. For the Southern Railway?

A. Yes.

Q. For the Atlantic Coast Line?

A. Yes.

Q. For the Louisville & Nashville?

A. Yes, sir.

Q. For the Lake Shore?

A. Yes.

Q. For the New York Central?

A. Yes.

Q. For the Michigan Central?

A. Yes.

Q. For the Erie?

A. Yes.

Q. For the Lackawanna?

A. Yes.

Q. For the New York, New Haven & Hartford?

A. Yes, sir.

Q. For the Reading?

A. Yes.

Q. For the Central of New Jersey?

A. Yes.

Q. For the Lehigh Valley?

A. Yes.

Q. For the Monon?

A. I am not so sure about the Monon.

Q. I am glad to find one you have not built for. Chicago Northwestern?

A. Yes, sir.

Q. Chicago, Milwaukee & St. Paul?

A. Yes, sir.

Q. And the Puget Sound extension of that road?

A. Yes, sir.

Q. For the Chicago & Alton?

A. I am not so sure about the Alton. I think we have, though.

Q. Texas Pacific?

A. I am not certain about that.

Q. Illinois Central?

A. Yes, sir.

Q. I have pretty nearly called the calendar.

A. There are a few you have missed.

Q. The American Bridge Company has not been able to put you out of that business, have they?

A. No; not these particular roads.

Q. Not those particular roads, and those are most of the roads. Are these bridges that the railroads build built after competitive bids are offered?

A. How is that?

Q. Are they built after competitive bids are offered?

A. Yes, sir.

Q. In all cases?

A. Practically all cases.

Q. In those cases was the American Bridge Company as a rule a bidder against you?

A. They were.

Q. What other bridge companies were bidders against you on those bridges?

A. Very often the Pennsylvania Steel Company, the Phoenix Bridge Company, the King Bridge Company and the Fort Pitt Bridge Company—the larger independents.

Q. You spoke of the Pennsylvania Steel Company as being a bidder against you?

A. Yes, sir.

Q. That company is partly, at least, controlled by the Pennsylvania Railroad Company, is it not, by stock ownership?

A. I understand that it is.

But it has met you in the field of competition?

Yes.

Even on business for the Pennsylvania Road itself?

Yes, sir.

And you have taken the business?

Yes, sir. If they were all as fair as the Pennsylvania
ad we would be all right.

How about the Panama locks?

What about them?

Who builds them?

We are building them.

You are building the Panama locks?

Yes, sir.

Did you get that in competition with the American
e. Company?

Yes, sir.

You got the job?

Yes, sir.

How much is the tonnage of those Panama locks?

About 55,000 tons.

That is a pretty big contract, is it not?

Yes, sir.

What does it amount to in dollars and cents, if you
mind telling us?

Something over \$5,000,000.

What other concerns bid on that work, except the
can Bridge Company?

The Pennsylvania Steel and Riter-Conley.

Anyone else?

That is all I recall.

This Riter-Conley Company is a large, strong con-
nd has been for many years, has it not?

Yes, sir.

That concern has been in business since long before
merican Bridge Company was formed, has it not?

Yes, sir.

That is a Pittsburg Company, is it not?

Yes, sir.

They have works in Allegheny, have they not?

Allegheny and Leetsdale.

Q. What about the Hell Gate Bridge; out here near New York? Do you know of a bridge of that name?

A. Yes, sir.

Q. The American Bridge Company built the main span and you have got the approaches, have you not?

A. They are building——

Q. They are building the main span, and you have the contract for the approaches, have you not?

A. Yes, sir.

Q. What is the tonnage of those approaches?

A. About 45,000 tons.

Q. What railroad is building that? Is it not the New Haven?

A. I do not know that that is the name of it. It is a Pennsylvania Railroad interest.

Q. Is it not the New York, New Haven & Hartford?

A. I believe they are partly interested in it.

Q. Is it not the New York Connecting Railroad? Is that the one you have the contract with?

A. Yes, sir.

Q. That is owned jointly, as you understand it, by the New Haven Company and the Pennsylvania?

A. Yes, sir.

Q. Now, the New Haven road is one of these roads that it is stated in the bill has interlocking directors with the Steel corporation. You did not find any difficulty by reason of that fact in getting that contract for these approaches, did you?

MR. DICKINSON: That is excepted as leading and incompetent.

MR. SEVERANCE: It is cross-examination.

MR. DICKINSON: I have not examined him on that.

MR. SEVERANCE: You have examined him on the extent of his business.

MR. DICKINSON: I never referred to interlocking directors.

A. No, sir.

By MR. SEVERANCE:

Q. The fact that some directors of the New York Central

re also directors of the Steel Corporation did not prevent our getting the contract for the terminal building here, this office building, did it?

MR. DICKINSON: That is excepted to as irrelevant and incompetent.

A. No, sir.

by MR. SEVERANCE:

Q. You did not run against that difficulty in bidding?

MR. DICKINSON: That is excepted to as incompetent.

A. No, sir.

by MR. SEVERANCE:

Q. In the business that you have done for the Pennsylvania Railroad did you find any difficulty because of the fact that certain gentlemen are directors of the Pennsylvania Railroad and also directors of the United States Steel Corporation?

MR. DICKINSON: That is excepted to as irrelevant and incompetent.

A. No, sir.

by MR. SEVERANCE:

Q. That did not interfere in the matter?

A. Not to my knowledge.

Q. You got the business?

A. We got our share of it.

Q. Did you bid on the main span of this Hell Gate Bridge?

A. Yes, sir.

Q. I mean the span that went to the American Bridge Company?

A. Yes, sir.

Q. What other companies bid on that?

A. I do not know. I understand, however, that the Pennsylvania Steel Company and the Phoenix Company bid on it. Whether there is any other or not I do not know.

Q. What companies bid against you on the approaches?

A. The same companies.

Q. The American Bridge Company bid on the approaches against you, did it not?

A. I suppose they must have; they got the job.

Q. I said "on the approaches."

A. Oh, on the approaches—I understood they did.

Q. You bid on the main span?

A. Yes, sir.

Q. They beat you on the main span and you beat them on the approaches?

A. Yes, sir.

Q. Do you know whether in both cases the contract was let to the lowest bidder?

A. I do not know.

Q. You know it was in your case, do you not?

A. I do not know.

Q. You do not know that?

A. No, sir.

Q. You merely know that the bids were accepted, as you have stated?

A. Yes, sir.

Q. And they were competitive bids?

A. Yes, sir.

Q. They were sealed bids, were they?

A. All bids are sealed.

MR. SEVERANCE: It appeared here the other day that the seals were sometimes broken.

MR. DICKINSON: They are all broken before you find out what they are.

By MR. SEVERANCE:

Q. From 1900, at the time the Bridge Company was formed, have you ever belonged to any pool or combination of any sort with the American Bridge Company?

A. No, sir.

Q. Have you ever belonged to any society or association of men, of which that company was a member, which had anything to do with prices?

A. No, sir.

Q. Are you a member of this society, that was testified to the other day by Mr. Dean, of the Phoenix Bridge Company?

A. What was the society?

Q. He said there was an association of bridge builders which had a secretary and an organization.

A. Yes, sir.

Q. What is the name of it?

A. The American Bridge Builders' Society.

Q. You belong to that, do you?

A. Yes, sir.

Q. The American Bridge Company is not a member of that association, is it?

A. No, sir.

Q. Mr. Marshall, each contract that is taken by bridge companies for the construction of a bridge, or for the building of a structural steel building, is a separate and distinct transaction? There is no uniform price on anything of that kind, is there?

A. No, sir.

Q. You have to take into account the design of the building and the cost of the raw material, the cost of labor, and such reasonable profit as you are satisfied to get, and then make a bid on each piece of work by itself?

A. Yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. And everybody else in that line of business has to do the same thing?

A. Yes, sir.

Q. So that an organization of a number of different companies in that business would simply provide a larger output and a larger working force in preparing the plans, preparing the bids, and in executing them after they are made?

A. Yes, sir.

Q. That is the only difference between a large and small concern?

A. Yes, sir.

Q. Anybody who has sufficient funds to procure the raw material or sufficient credit and sufficient engineering capacity

to figure costs and attend to the assembling and the erecting and fabricating of the work can go into that business?

A. Yes, sir.

Q. Can you tell me anything about the comparative tonnage of any of the rest of your competitors in 1900 and at the present time? Take the Pennsylvania Steel Company. I do not ask you for figures, but would you say that their output is larger than it was twelve years ago?

A. Yes, sir; I think it is very much larger.

Q. Very much larger than it was twelve years ago?

A. Yes.

Q. What would you say as to the Phoenix Company?

A. I do not think it is any larger.

Q. What would you say about these other companies you spoke of as being engaged in competition with in the business, —the larger companies?

A. Have you the names of them?

Q. I had a list of them, but I do not find the list at this moment. What is the next largest interest, outside of the American Bridge Company and yours?

A. I think the Pennsylvania Steel Company.

Q. And what is the next to that?

A. Probably the Phoenix.

Q. And next to that?

A. King.

Q. How does the tonnage, from your observation of King's concern, compare with what it was twelve years ago?

A. I do not think it is very much larger.

Q. You only know from observation?

A. Yes, sir.

Q. You do not think it is larger?

A. No, sir.

Q. What other company is there that you would say is next in output to the King Company?

A. Probably the Riter-Conley Company.

Q. Mr. Riter is dead, is he not?

A. Yes.

Q. He was the head of the company.

A. He was the whole thing, yes.

Q. What is your answer?

A. He was the whole show.

Q. And he died three or four years ago?

A. Yes.

Q. Up to the time he died, that company had been growing a good deal, had it not?

A. Yes, sir.

Q. You stated that in your opinion for the last year the American Bridge Company had secured about 70 per cent of the business that was competitive with you.

A. Yes, sir.

Q. You did not mean by that that they had secured 70 per cent of the total business in that line in the country in these large and small bridges alike, but you meant 70 per cent of the business that you were brought in contact with?

A. I meant it was my opinion that they had secured 70 per cent of the class of work that they were competitors for.

Q. Competitors with you?

A. No, competitors with everybody.

Q. Is it not a fact that they have plants scattered around through the country that are competitors of local concerns, which do not come in contact with you?

A. I think not.

Q. You think there are none such?

A. I do not think there are.

Q. For instance, you stated that you had very little competition—I am speaking of something I know something about now—with the Minneapolis Steel Machinery Company.

MR. DICKINSON: I object to that. It is telling the witness that he had better not state anything contrary to what you know to be true.

MR. SEVERANCE: I am simply following your own methods.

MR. DICKINSON: No, if you follow that line you are following a line that I have never pursued.

By MR. SEVERANCE:

Q. I will ask you, then, about the Minneapolis Steel & Machinery Company. Do you know about that company?

A. Yes, sir.

Q. What do you know about them? Do you know whether they do a large or a small business?

A. I do not know about the extent of their business. We have met occasionally in competition, but not a great deal.

Q. Then you do not look upon them as a specially strong concern or a concern with a large output, because you have not met them very much?

A. No, I do not consider them a concern with a large output.

Q. How many men do you employ?

A. You mean the shops?

Q. Yes; and in erecting, altogether, in your shops and in erecting?

A. Probably 5,000 men.

Q. You employ about 5,000 men. How many men would you say would be employed in a concern that you would regard as a reasonable competitor of yours? How large a concern would a concern have to be in the way of employment of labor—a thousand men?

A. I could express it better in tonnage. Any concern that does not get out more than 10,000 tons a year I would not consider a competitor.

Q. But any concern that does get out 10,000 tons a year you would consider a competitor?

A. Yes.

Q. And you would consider such a concern a competitor of these other competitors of yours?

A. Yes.

Q. The American Bridge Company and the Phoenix and Riter-Conley and the others?

A. Yes.

Q. So if we could name the concerns in the country that have an output of ten thousand tons a year, you would put them in the class of substantial competitors?

A. Yes, sir.

Q. You do not know what the output of the Minneapolis Steel & Machinery Company is?

A. I do not.

Q. Do you know the Koken Iron Works of St. Louis?

A. I have heard of them.

Q. Do you regard them as competitors of yours?

A. In a way, yes.

Q. How about the Clinton Bridge & Iron Works of Clinton, Iowa?

A. I do not know them.

Q. I call attention to the fact that in this book from which Judge Dickinson was examining you this morning, they appear in 1903 to have had an annual capacity of 10,000 tons. Would that make a difference in your view?

A. No, sir.

MR. DICKINSON: What page is that?

MR. SEVERANCE: Page 21 of this book. Clinton Bridge & Iron Works of Clinton, Iowa, railroad and highway bridges and iron and steel buildings. Annual capacity, 10,000 tons. That is the information given in this book.

By MR. SEVERANCE:

Q. Do you consider the Kenwood Bridge Company of Chicago a competitor?

A. At the present time?

Q. Yes.

A. I do.

Q. Did you in 1903?

A. No, sir.

Q. I call your attention to the fact that on page 20 of this book, from which Judge Dickinson was examining you, it being the Swank book for 1903, this statement is made in regard to the Kenwood Bridge Company:

"The Kenwood Bridge Company, 417 First National Bank Building, Chicago; works at 77th Street and Anthony Avenue. Steel railroad and highway bridges and steel buildings. Annual capacity 10,000 tons."

Would that statement affect your views any?"

A. No, sir; I think that is exaggerated.

Q. You do not agree with the authority?

A. No, sir.

MR. COLTON: I am not sure the witness knows the date you are asking about.

MR. SEVERANCE: 1903. This is a directory that came out January 1, 1903. It says corrected to January, 1903. It says that on the title page.

By MR. SEVERANCE:

Q. Take the Wisconsin Bridge & Iron Company of Milwaukee.

A. Yes, sir.

Q. Have they been competitors of yours for a long time?

A. Yes, they have.

Q. They were back in 1900, were they?

A. Yes, sir.

Q. Where do they do business?

A. Principally in the West.

Q. Take the Joliet Bridge & Iron Company, North Collins Street, Joliet, Illinois.

A. I do not know a thing about them.

Q. I call your attention to the statement in this book at page 20.

MR. DICKINSON: You objected to my reading that.

MR. SEVERANCE: But this is cross-examination.

MR. DICKINSON: Yes, it is cross-examination. Cross-examination is one thing and reading from a book is another thing.

MR. SEVERANCE: I am combining the two.

MR. DICKINSON: I understand, but I object to your reading from the book because you objected to my reading from it.

MR. SEVERANCE: The objection will be entered.

By MR. SEVERANCE:

Q. Would the fact that it appears at page 20 of this directory, from which Judge Dickinson was examining you, that the Joliet Bridge & Iron Company, North Collins Street, Joliet, manufacture railroad and highway bridges, iron and steel buildings, have an annual capacity of 10,000 tons, and also make riveted pipe, tanks and so forth, shake your opinion as to whether they were competitors of yours?

MR. DICKINSON: What time, now, are you referring to?

MR. SEVERANCE: The book for 1903 and corrected to January 1, 1903.

MR. DICKINSON: You mean would the fact that it appears in that book for 1903 shake his statement that they were not competitors in 1900?

MR. SEVERANCE: No; competitors at that time.

MR. DICKINSON: I never asked him if they were competitors in 1903.

MR. SEVERANCE: I have asked him.

MR. DICKINSON: Did you understand that you were being asked about competitors in 1903?

THE WITNESS: Yes.

MR. DICKINSON: All right, then.

By MR. SEVERANCE:

Q. What is your answer to the question?

A. It does not.

Q. Brown-Ketcham Iron Works, Indianapolis?

A. Yes.

Q. Competitors of yours?

A. Yes, sir.

Q. And have been for many years?

A. Yes.

Q. It is a very large concern, is it not?

A. Fairly large, yes.

Q. What is your opinion, from your observation, as to their annual output?

A. At what time?

Q. Now.

A. Now?

Q. Well, within the last two or three years, any time within the last two or three years.

A. Well, I should say they had an output of probably 24,000 tons.

Q. How much?

A. 24,000 to 30,000 tons.

Q. Would the fact that the following entry appears in this book, corrected to January 1st, 1903, at page 19, "Brown-Ketcham Iron Works, Indianapolis, Railroad and highway bridges and iron and steel buildings. Annual capacity 45,000

tons. Also make architectural ornamental and iron work'' affect your views as to the amount of their tonnage?

A. No, sir.

Q. You do not think they had so much tonnage?

A. I am certain of it—not certain of it, but I am quite positive they did not.

Q. You think they have more tonnage now than they had in 1903?

A. I think they have.

Q. Have they a plant additional to the one at Indianapolis?

A. They subsequently built one at Greensburg.

Q. Where is that?

A. Near Pittsburg.

Q. You mean to say their total output of both plants is only 30,000 or 40,000 tons?

A. They are out of business; they failed.

Q. When did they fail?

A. I think the last year.

Q. Well, I asked you for the last two or three years?

A. I do not know how much they got out at Greensburg.

Q. Do you know the Rarig Engineering Company?

A. Never heard of them.

Q. Would the fact that on page 18 of this book there appears the following entry, "Rarig Engineering Company, Fifth Avenue, east of Alum creek, Columbus, Railroad and highway bridges and iron and steel buildings. Annual capacity, 15,000 tons. Also builds engines, boilers, tanks, etc." affect your view?

A. No, sir.

Q. It would not affect your view at all?

A. No, sir.

Q. You still feel certain that they were not large enough to be competitors of yours either in 1900 or 1903, or at any time?

A. I feel certain they were not competitors.

Q. And are not yet?

A. And are not yet.

Q. And never have been?

A. And never have been.

Q. That is, you feel then that they did not have 15,000 tons capacity?

A. I do.

Q. Because if they had had anything over 10,000 tons you would think they were competitors?

A. I think I would have heard of them.

Q. You never heard of them?

A. Never heard of them.

Q. Have you heard of the Brackett Bridge Company, of Cincinnati?

A. If I have it was very indefinite.

Q. You never regarded them as competitors of yours?

A. I did not.

Q. Would the fact that it appears on page 15 of this book that the Brackett Bridge Company, Atlas Bank Building, Cincinnati, Works at Glendale, railroad and highway bridges, iron and steel buildings, annual capacity 10,000 tons, have any effect upon your judgment?

A. It would not.

Q. Are you acquainted with the Carolina Bridge & Steel Company, of Burlington, North Carolina?

A. I never heard of them.

Q. You build bridges in North Carolina, do you not?

A. I do not know that we have, but we could.

Q. Of course, you could, but you said you built on the line of the Southern Railway and the Atlantic Coast Line.

A. I am not sure they were in that State.

Q. But they were in that general region?

A. Yes, sir.

Q. Which would be tributary to a bridge company in North Carolina?

A. Yes, sir.

Q. Would your judgment of this company be changed any by the fact that it appears on page 17 of this book that the Carolina Bridge & Steel Company of Burlington, North Carolina, making steel railroad and highway bridges, had an annual capacity of 10,000 tons?

A. No, sir.

Q. You never heard of them?

A. Never heard of them.

Q. What about the West Virginia Bridge & Construction Company, of Wheeling?

A. They are out of business.

Q. Did you know of them at any time?

A. Yes, sir.

Q. Were they a competitor of yours while they were in business?

A. For a short while.

Q. You testified with reference to the Schuylkill Bridge Works this morning, that that was a brokerage concern at one time, did you not?

A. I think so, yes, sir.

Q. Did they not afterwards acquire a plant?

A. Yes, sir.

Q. At what place?

A. Pottstown, Pennsylvania.

Q. And after acquiring that plant did they come in competition with you?

A. Yes, sir.

Q. And with these other companies, the Bridge Company and others?

A. Yes, sir.

Q. And they still are competitors?

A. Yes, sir.

Q. The Penn Bridge Works I think you spoke of this morning, did you not?

A. I do not know whether I did or not. There is such a concern.

Q. And it is a competitor of yours?

A. Yes, sir.

MR. SEVERANCE: Did you intend to ask him for each one of these, Judge, or did you skip some of them?

MR. DICKINSON: Some of them I skipped, and some of them had gone into the American Bridge Company, and had references back to another page. Some of them I skipped until I got to a certain point. After the objection was raised I read them right along.

MR. SEVERANCE: That is what I thought, that you did for a while.

By MR. SEVERANCE:

Q. Do you know the Columbia Bridge Company, of Pittsburgh?

A. They are out of business.

Q. When did they go out of business?

A. Several years ago.

Q. Do you know the Raritan Steel Company?

A. No, sir, I do not.

Q. Never heard of them?

A. I do not think I have; I may have.

Q. Do you know Milliken Brothers?

A. Yes, sir.

Q. That was a very large concern, was it not?

A. When?

Q. It was previous to the time it went into the hands of a receiver—it was a very large concern, was it not?

A. Yes, sir.

Q. For a good many years?

A. It was not very large in 1900.

Q. How large was it then?

A. I think they had a capacity of about 12,000 tons.

Q. Was it increased after that?

A. Yes, sir.

Q. And were they reorganized after their receivership?

A. I do not know what process they went through.

Q. You do not know whether they were reorganized or not?

A. No, sir.

Q. You are not familiar with it?

A. No, sir.

Q. How large was it at the time they failed, do you know?

A. I should say it was 36,000 tons.

Q. In what year did they fail, do you remember?

A. I do not recall.

Q. Was it not at the time of the panic in 1907 that they failed?

A. Well, it was about that time.

Q. It was growing out of the financial troubles at that time, was it not?

A. Yes, sir.

MR. LINDABURY: It was previous to that.

MR. DICKINSON: Do you know anything about that?

THE WITNESS: Milliken Brothers?

MR. DICKINSON: I mean when they failed.

THE WITNESS: I do not know, no, sir.

MR. LINDABURY: It was of course in the newspapers.

MR. DICKINSON: I object to the statement.

MR. LINDABURY: He was a competitor of all these companies. Certainly he knows.

MR. DICKINSON: The witness has stated that he did not know, and I do not think it is proper for you to say he does know, when he says he does not. He is speaking under oath and I do not think that is a proper comment on the witness' testimony.

MR. LINDABURY: I beg your pardon. If he said that I did not hear it.

MR. DICKINSON: Did you not say you did not know?

THE WITNESS: I do not know when they did fail.

MR. LINDABURY: It is such common knowledge here that it did not occur to me there was any impropriety in making the remark.

By MR. SEVERANCE:

Q. Did Judge Dickinson ask you this morning about the Boston Bridge Works?

A. I do not recall whether he asked me or not.

Q. Do you know about them?

A. Yes, sir.

Q. They are competitors of yours?

A. Yes, sir.

Q. And have been for many years?

A. Yes, sir.

Q. What did you say was their output in 1900, or could you not give an estimate?

A. Yes; I do not think they had an output of over 7,000 or 8,000 tons.

Q. Did they get up to about 15,000 tons in 1903 or 1904?

A. I do not think they ever got up to 15,000 tons.

Q. Are they still in business?

A. They are still in business.

Q. Do you know what their output is now?

A. I think it is about 8,000 tons.

Q. Would the fact that this book that Judge Dickinson was examining you from has the following entry on page 12, "Boston Bridge Works, Incorporated, 47 Winter Street, Boston. Works at Cambridge. Railroad and highway bridges, and iron and steel buildings. Annual capacity 15,000 tons: Also make railroad turn-tables, traveling cranes, etc." modify your opinion?

A. No, sir.

Q. The New England Structural Company. Did you testify as to that this morning?

A. I do not know whether I did or not.

Q. You know of them, do you not?

A. I have heard of them indefinitely.

Q. Were they not competitors of yours?

A. I never considered them so.

Q. Would the fact that on page 13 of this book it appears as follows, "New England Structural Company, 110 State Street, Boston; works on Second Street, Everett; railroad and highway bridges and iron and steel buildings, annual capacity 17,000 tons" affect your view?

A. No, sir.

Q. They may have been in competition with some of those companies down in New England and that fact not have come to your knowledge?

A. Yes, sir.

Q. Is not that true?

A. They may have been.

Q. And that is true as to these other companies I have asked you about, and that you said you did not find to be competitors of yours; they may have been competitors of other concerns, some of the smaller plants that belonged to the American Bridge Company, and others?

A. It is not probable that they were competitors in the class of work that we were after, because——

JUDGE DICKINSON: Have you finished your answer?

THE WITNESS: Yes sir.

By MR. SEVERANCE:

Q. Will you give me a list of the competitors of the Berlin Iron Bridge Company of East Berlin, Connecticut?

A. A list of the competitors?

Q. Yes.

A. When?

Q. In 1900.

A. I suppose the Boston Bridge Works and the Shiffler Bridge Company——

Q. Which one was that?

A. The Shiffler Bridge Company—practically all the concerns were competitors of the Berlin Bridge Company in small building work.

Q. We do not understand “practically all.” That does not mean anything. What concerns were there that were competitors? Would you be able to give a complete list?

A. I could not give you a complete list.

Q. Is it not quite likely that there are many companies up in New England, some of which you said you did not know of, in competition with them?

A. It is very likely.

Q. You remember this morning Judge Dickinson asked you about some companies in Worcester and Springfield, if I remember correctly?

A. Yes, sir.

Q. You said you did not know about them?

A. Yes, sir.

Q. You did not know whether or not those companies existed?

A. Yes, sir.

Q. They would be natural competitors of the Berlin Company, would they not, in certain classes of work, if they did exist?

A. Yes, sir.

Q. So in giving the answers you did give this morning, when you said that you did not know of these companies—I think that was your expression—you did not intend by that to convey the idea that there were no companies competitive with these concerns that were taken over by the Bridge Company?

A. No, sir; I did not.

Q. You did not intend to say that those companies which were read off to you, and as to which you said you did not know, were not competitors of some of the plants of the Bridge Company, did you?

A. I simply intended to testify that they were not competitors of the Shiffler Bridge Company.

Q. That is what I thought. In making up the estimate that you gave this morning, or your opinion, that at the time the American Bridge Company was formed it absorbed about 75 per cent of the output of this class of work—that was your statement this morning—you did not take into account the business that was done by these various companies that you did not know about, did you?

A. No, sir.

Q. And you know nothing as to the percentage of the total business of the country done by those companies that had not come to your notice?

A. I know nothing about them.

Q. That estimate is not based on published statistics, is it?

A. No, sir.

Q. You stated that it was your own view from what had come under your observation in bidding for jobs?

A. Yes, sir.

Q. You stated this morning that was not based on statistics?

A. I did.

Q. Of any sort?

A. Yes.

Q. It was merely your opinion from what you had observed?

A. Yes, sir; from what figures I would collect myself from my own observation.

Q. From your own observations?

A. Yes, sir.

Q. Did any of the plants that were purchased by the American Bridge Company have rolling mills, except the Pencoyd plant, or do you not know about that?

A. I think not.

Q. You do not know?

A. The Keystone Bridge Company was a part of the Carnegie Steel Company. They had one.

Q. That was a separate corporation, was it not?

A. I am not sure about that?

Q. Besides those two, were there any other plants which had rolling mills?

A. The North Works, Illinois,—I guess that did not go into the Steel Corporation.

Q. Do you know of any others?

A. That is all I can recall.

Q. They took the steel and fabricated it, just as you did?

A. Yes, sir.

MR. SEVERANCE: That is all.

REDIRECT EXAMINATION,

By MR. DICKINSON:

Q. Mr. Marshall, you were asked about the increase in the capital of your company from \$10,000 to \$3,500,000. State whether or not that whole \$3,500,000 was earned by your company within the time it was put in, or whether it was contributed from outside sources?

A. Both.

Q. Part of it was from outside sources?

A. Yes, sir.

Q. It did not represent entirely the earnings within that period?

A. No, sir.

Q. You were asked about the increase from 18,000 tons in 1900 to 101,000 tons in 1911. I will ask you whether or not there has not been a general increase during that time in the volume of the business done in the entire country?

A. Oh, yes.

Q. Do you know any other of these companies that you have mentioned that increased within that period in the same proportion that your company did?

A. I do not.

Q. You mentioned several companies, I believe, that in your judgment had not increased at all?

A. Yes, sir.

Q. You said that you had done some work for the Union Steel Company and the Sharon Steel Company. When was that work done?

A. Early in 1901, 1902, or 1903—somewhere along there.

Q. State whether or not that was before they were taken over by the United States Steel Corporation?

A. It was.

Q. It is stated at the head of these statistics, in this book from which Mr. Severance read: "The capacity, when given, has been furnished by the operators and is in gross tons of 2240 pounds." Does that change the answers or views which you have expressed in any respect or has it any bearing upon the views you have expressed?

A. No, sir.

Q. What class of work did you have in mind for which you said the Shiffler Company and the McClintic Marshall Company were competitors?

A. Railroad bridges, highway bridges of large tonnage, and miscellaneous structural steel work of a fair amount of tonnage.

Q. Was that or not a class of business that was generally competed for by the larger class of fabricators?

A. Part of it was and part of it was not.

Q. What part was not?

A. The various bridge companies each generally had a class of work that they specialized on. There were not many of the large bridge companies that were after contracts of small tonnage.

Q. Now what do you mean by contracts of small tonnage?

A. Anything under 100 tons, or two or three hundred tons.

Q. What class of work would that cover?

A. That would cover small railroad bridges and small buildings.

Q. Was that within the class of work that you competed for?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. In addition to the large railroad bridges and structural buildings?

A. Yes, sir.

MR. LINDABURY: I do not think you understood the witness, Judge, or that the witness understood you.

MR. DICKINSON: (to the stenographer): Now read those questions, will you, to the witness, as well as the answers.

(The stenographer read the questions and answers as follows:)

“Q. What class of work would that cover?

“A. That would cover small railroad bridges and small buildings.

“Q. Was that within the class of work that you competed for?

“A. Yes, sir.

“Q. It was?

“A. Yes, sir.

“Q. In addition to the large railroad bridges and structural buildings?

“A. Yes, sir.”

By MR. DICKINSON:

Q. What class of work did you mean to embrace in the classes which you said that the Shiffler Company competed for?

A. The Shiffler Bridge Company competed for fairly large sized bridge work of all kinds, and their specialty was rolling mill buildings.

Q. The McClintic Marshall Company. What class of work did you say they competed for?

A. For any class of work that has any tonnage of any magnitude.

Q. Of what magnitude?

A. Anything that had over 200 or 300 tons in it.

Q. In 1900, when the Shiffler Company was competing for interstate business, it was on the class of work you have just mentioned, was it?

A. Yes, sir.

Q. Who did you say were your competitors for that class of work? Just name them, please?

A. In 1900?

Q. Yes, in 1900.

A. Shall I name them?

Q. I want you to name them, yes.

A. The Pencoyd, Edge Moor, Keystone, King, Berlin Bridge Company.

Q. Roberts? Oh, the Pencoyd; you mentioned that.

MR. SEVERANCE: I object to leading the witness.

By MR. DICKINSON:

Q. State whether or not the Lassig Bridge Company was one of the competitors?

MR. SEVERANCE: I object to that. You have asked this witness to state these names, and now you are telling him what to say.

MR. DICKINSON: I am not telling him what to say. I am asking him whether or not he remembers that that concern was a competitor in that class of work.

MR. SEVERANCE: I object to counsel listing the names of the companies concerning which he put this question.

MR. DICKINSON: I will ask the stenographer to repeat the question.

(The stenographer repeated the question as follows:)

“Q. State whether or not the Lassig Bridge Company was one of the competitors?”

By MR. DICKINSON:

Q. Answer that, please?

A. They were.

MR. DICKINSON: That is all.

RECROSS EXAMINATION,

By MR. SEVERANCE:

Q. What was the tonnage, according to the best of your information, of the American Bridge Company at the time it was organized?

A. About 500,000 tons.

Q. And how much has that been increased? What was the tonnage of the American Bridge Company last year?

A. Do you mean the output?

Q. Yes.

A. I think the output was 580,000 or 590,000 tons.

Q. The increase, then, was about 80,000 or 90,000 tons?

A. Yes; that was the increase in the output, not the capacity.

Q. I am speaking of the output. The increase in the output of the American Bridge Company, according to your best information, was from about 500,000 tons at the time it was organized to 580,000 tons last year?

A. Yes, sir.

Q. And the increase of your company during the same period was from 18,000 tons to over 100,000 tons?

A. Yes, sir.

Q. And is it not a fact that the consumption of this fabricated product in the country just about doubled during that period?

A. No, sir.

Q. Is not that your information, that the total consumption was about twice what it had been?

A. It is very much larger than it was.

Q. Then the increase of the American Bridge Company was about 16 per cent. and the increase in your company was several hundred per cent?

A. Yes, sir.

Q. During that period named?

A. Yes, sir.

Q. You are unable to state what the increase in the consumption of the country was?

A. I do not know, sir.

Q. It is a fact, however, is it not, that has come under your observation, that the American Bridge Company has not at the present time as large a percentage of the total output as it had in 1900?

A. I think it has pretty nearly.

Q. Pretty nearly?

A. Yes.

Q. You do not think, though, it has as large a percentage as it had in 1900?

A. No; I do not think it has.

MR. SEVERANCE: That is all.

MR. DICKINSON: That is all, and we are much obliged to you.

CHARLES PAGE PERIN,

called as a witness in behalf of the United States, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

By MR. DICKINSON:

Q. Where do you live?

A. New York.

Q. What is your age?

A. Fifty years.

Q. In what business are you now engaged?

A. As consulting engineer.

Q. With what specialties?

A. Coal and iron deposits.

Q. Coal and iron properties?

A. Yes.

Q. How long have you been engaged in that business?

A. About 27 years.

Q. State whether or not you were educated for that work or have taken it up since then?

A. I have followed that profession continuously since leaving college.

Q. What college?

A. Harvard.

Q. Are you a graduate of Harvard?

A. Yes, sir.

Q. What time did you leave college?

A. I graduated from the Academic Department in 1883 and studied afterwards in the scientific school at Cambridge, and also at the Ecole des Mines in Paris.

Q. What is the special course of instruction at the Ecole des Mines?

A. The origin of ore deposits.

Q. Have you had any practical experience in the construction and operation of blast furnaces and plants, and in the manufacture of steel and iron?

A. Yes, sir.

Q. What positions have you held in connection with the practical operation of such furnaces?

A. I began my experience in Alabama at the Oxmoor Furnaces, as fireman, and I have held every position about the blast furnace from fireman to proprietor.

Q. Where is the Oxmoor Furnace?

A. Seven miles below Birmingham.

Q. State whether you have constructed, as engineer, any blast furnaces, and if so, where?

A. I built the Ashland No. 2 furnace; I rebuilt Middlesboro No. 1 and No. 2.

Q. Where is that?

A. Middlesboro, Kentucky.

Q. Near Cumberland Gap?

A. Yes, just across from the Gap. I rebuilt the Embreeville Furnace.

Q. Have you had any experience in locating coal and iron properties and examining into and determining their character and the uses of minerals for manufacturing purposes?

A. Yes, sir.

Q. In this country?

A. Both in this country and abroad.

Q. How long have you been engaged in that kind of work?

A. Fourteen years.

Q. Have you made any original examinations of unexplored properties of the country?

A. I conducted a survey across India, from Bombay to Calcutta, in regions not then known to carry iron deposits. Also in Siberia on the Baravinski Steppe.

Q. I am asking you now as of 1907, and not since that time, so unless I specify please understand the inquiry is addressed as of that period. What were the principal ore bodies, of ore which was available according to the then known state of the art of production and economic use in the United States?

A. The Lake Superior District, treated broadly as a district. That includes the various ranges there.

Q. What are those ranges?

A. They were actively operating in 1907 the Missabe, the Gogebic, and the Michigan Peninsula.

Q. What were they called, what ranges?

A. The Marquette, the Menominee, the Vermilion——

Q. Where is the Vermilion?

A. The Vermilion is next to the Missabe, only a short distance from the Missabe.

Q. In what direction?

A. If my memory serves me it is southwest.

Q. You have spoken of the ranges in Minnesota and Michigan. Did either of those extend into Wisconsin?

A. No; the Minnesota range did not extend into Wisconsin. There were some deposits in Wisconsin, in the Bariboo region. There were also known deposits around Lake Champlain, which formed the source of raw material for eastern furnaces. There were deposits in Canada which were operated to a small extent.

Q. Go on, will you?

A. There were deposits that formed the supply for the Colorado Fuel & Iron Company, located in Wyoming, and also in Colorado. They are now getting part of their raw material from New Mexico.

Q. I am not speaking of the present time. I am speaking of 1907.

A. They were known, but they were not then in active exploitation.

Q. You have spoken of the northern ores. Have you mentioned the southern ores yet?

A. Alabama, the Birmingham District; there are also a number of brown ore deposits throughout Virginia operated to supply the blast furnaces of Virginia.

Q. State whether, with those exceptions, there were any other large ore beds which at that time were commercially available for making pig iron economically in the United States, outside of where you have mentioned?

A. There were isolated deposits in New Jersey that were a source of a certain tonnage of pig iron.

Q. Any large ore beds outside of those you have mentioned?

A. I cannot say whether the Texas deposits at that time would be said to be known. They were not in operation, at any rate; they were not then being mined on any extensive scale.

Q. Were there no furnaces located there?

A. Yes; there were two small blast furnaces, charcoal furnaces, in the State of Texas.

Q. What was their capacity?

A. I forget for the moment; but the two together made about 30,000 tons a year.

Q. Were there any large ore beds outside of those which you have mentioned in the Minnesota region and the Birmingham District which could be worked and made into pig iron at a profit in competition with those two ore beds that you have mentioned—I mean in Michigan and Birmingham?

A. And Minnesota also, you mean?

Q. I mentioned Minnesota. Minnesota and Michigan, yes?

A. No; except in the case of local markets, such as in Central Virginia and New Jersey and parts of Pennsylvania.

Q. Were you or were you not ever called upon in connection with any other persons to make a survey of the Birmingham District with a view to determining the amount and character of the iron and coal properties in that region, and, if so, state when it was and who were associated with you and the purpose for which you undertook the work?

A. In 1904 I was a member of what was known as the Appraisal Commission, and we examined, not the whole Birmingham District, but we examined only the deposits of iron and coal owned by the Tennessee Coal, Iron & Railroad Company, the Sloss Sheffield Coal & Iron Company and the Republic Iron & Steel Company.

Q. Who were associated with you in that work?

A. There were associated with me T. H. Aldrich, who was Chairman of the Commission, Mr. J. W. Worthington, Mr. Walter Moore, Mr. Given and myself. I think we composed the commission.

Q. I will ask you whether or not you recall Mr. Aldrich's name?

A. I stated Mr. Aldrich was the Chairman of the Commission.

Q. What was the purpose you had in view?

A. The competition among these three companies had been so severe in the matter of the sale of pig iron that an effort was made to bring them together in some sort of combination, and there was such a diversity of opinion as to the relative value of each property that an effort was made by the then owners to ascertain the values of those three corporations.

Q. Did or did not this involve an examination into the volume?

A. There was no effort made to get at an appraisal of the money value of their plants, but it was a question of the number of tons of coal and of iron ore each company held.

Q. You looked into the extent of their properties?

A. The extent of their properties only.

Q. The iron ore. State how you proceeded with that work. Did you do the work?

A. We were about six months on this work, examining about a half million acres of land.

Q. What methods did you pursue and what was done?

A. The maps of each company were submitted to this committee and the mines examined; bore hole records were submitted and an estimate was made of the workable tonnage each company had, and this estimate was recorded in a report which has been published and filed with our testimony before the Stanley Committee.

Q. There is printed here a copy of that report, and counsel for the other side have agreed that this copy may be used as if it were the original, subject to exceptions for relevancy and competency, and also subject to correction. Please examine that report and state whether or not that is a copy of it.

A. Yes sir; this is a copy.

MR. DICKINSON: I offer that in evidence under the agreement as stated.

(The paper so identified, was thereupon offered in evidence and marked "Government's Exhibit Perin No. 90, May 22, 1912.")

By MR. DICKINSON :

Q. Have you a copy there of the report?

A. Yes, sir.

Q. You may use that, if you please. What does that set forth as the holdings at that time, that is, May 25th, 1904, of the Tennessee Coal, Iron & Railroad Company in ore and coal properties, as to the extent of each.

MR. REED: Is not the report itself the best evidence of that?

MR. DICKINSON: Yes; I think it is probably, but I wanted to get the figures here in a statement.

MR. REED: You have just offered the report itself in evidence, so that the figures go in that way.

By MR. DICKINSON :

Q. I will ask you, Mr. Perin, what does that show to be the tonnage of iron ore properties owned at that time?

A. Of all kinds, it shows 412,798,500 tons.

.. Q. Of all kinds of ore?

A. Of all kinds of iron ore; and 1,623,639,500 tons of coal.

Q. Where were those iron ores located in reference to Birmingham?

A. The Birmingham District proper contained the major part of all of the red ore, and the brown ores were contained in Georgia and in Southern Alabama—not southern Alabama rather, but outside of the Birmingham District proper.

Q. What you call the Birmingham District proper would include what radius?

A. At the time of our examination it was considered to be about 15 miles, or a little bit more than that, from Irondale to Sparks Gap; today the district is considerably longer and larger.

Q. You say the red ore was situated within that district, that is, within about 16 miles of Birmingham?

A. Yes.

Q. And what is the volume given there of the red ore?

A. 398,686,100 tons.

Q. State whether or not that report correctly sets forth the results of the investigation made, and whether you believe

the same was a correct statement of the holdings at the time of the Tennessee Coal, Iron & Railroad Company of the classes of properties set out in the report?

A. Well, the object of the report was to determine the relative holdings of each company, and I presume the percentage of error is the same in each one. Later developments, I mean bore-holes, have determined acreage which was not then considered merchantable or in existence even, and more careful studies by the Geological Survey in 1906, two years after this report was made, would alter these figures very materially. They are substantially accurate as to the relation between the Sloss-Sheffield Coal & Iron Company, the Republic Iron & Steel Company and the Tennessee Company only.

Q. What figures, then, would you give, say as of 1907, as the holdings of the Tennessee Coal, Iron & Railroad Company in the several districts, the Birmingham district and the other districts, of iron ore?

MR. REED: I object to that until the witness is shown to be familiar with the situation in 1907.

By MR. DICKINSON:

Q. Are you familiar with that section of the country?

A. I am reasonably familiar with that section of the country, yes.

Q. Just state what your familiarity with it is, and what knowledge of it you have?

A. I was commissioned in 1906 to purchase the lands of the Tutweiler Coal & Iron Company for the Birmingham Coal & Iron Company, and I purchased their iron ore holdings and coal holdings; purchased the lands of the Morris estate, the Hilman estate, and the State of Alabama, making up the coal area belonging to the Birmingham Coal & Iron Company. In that purchase of the coal area we were obliged to take in the blast furnace belonging to that company, and that necessitated a study of the iron ore holdings which belonged to the Tutweiler Coal & Iron Company.

Q. State whether or not you became generally acquainted with the iron ore deposits in that section of the country, and are generally acquainted with them?

A. I did, but I cannot say that the additions to the hold-

ings of the Tennessee Company as between 1904 and 1907 would be known to me.

Q. What would you give, as near as you can from the information and knowledge you have, as their total holdings as of 1907?

MR. REED: I am sure, Judge Dickinson, that Mr. Perin does not want to be put in the position of an expert as to matters that are shown to be after he left the district, and after he had made his examination of the Tennessee Company's property.

MR. DICKINSON: But he says he went back there after that and did go into the district.

MR. REED: To examine properties of other companies.

THE WITNESS: Adjacent to it.

MR. REED: He does not want to be misrepresented, I am sure.

By MR DICKINSON:

Q. Do you know approximately the volume of ores held at that time by the Tennessee Coal, Iron & Railroad Company? If so, please state it?

A. I do not know what they held; I knew what they held in 1904. It was approximately 412,000,000 tons.

Q. You state that to be approximately correct as of that time?

A. As of that time, from the information before the Commission.

Q. You spoke of the Birmingham District as being about 16 miles. These other ores are brown ores, are they?

A. Yes, sir.

Q. How far did they lie from Birmingham?

A. Down at Tenna Hill, in the lower end of the valley; and they had some at Champion.

Q. Where do they lie?

A. Champion is probably outside the twenty-five mile limit, but there was a uniform freight rate on all furnace materials within twenty-five miles.

Q. What other raw materials besides iron were in that radius?

A. Both the coal and the limestone.

MR. REED: Judge, I do not think you got Mr. Perin's answer to that question asking him to define the Birmingham District as it was considered in 1904. He said 16 miles in length, and you, in asking this question have assumed he said within a radius of 16 miles.

By MR. DICKINSON:

Q. Have you finished answering the question as to where the other ores were?

A. If you will change the nature of your question I can give you a clearer answer to it. I think it is confusing.

MR. DICKINSON: Read the question.

(The stenographer read back the testimony on this point.)

MR. DICKINSON: Just strike that out. There is no objection to that, is there?

MR. REED: No.

By MR. DICKINSON:

Q. How far did these other ores lie from Birmingham?

A. The Tennessee Company owned iron ores in Georgia, which are between 75 and 100 miles distant from Birmingham; they also owned brown ores, both north and south of Birmingham within a radius of 25 miles.

Q. You spoke of the Birmingham district as being 16 miles. What do you mean by that?

A. I spoke of the investigation in 1904 having covered an area between Irondale, or Gate City and Sparks Gap, approximately 15 miles or 16 miles; perhaps a little more; the exact mileage I had not in mind. But between those two points the development had been most active, and there was the greatest knowledge of the deposits.

Q. Within 16 miles of Birmingham lies, as I understand, a large body of red ore and coal and limestone?

A. Yes, sir.

Q. And these are the main ingredients used for making pig iron, are they not?

A. Yes, sir.

Q. Now, Mr. Perin, state whether or not from your acquaintance with other sections of the United States you know of any section where all the elements which combine in the production of iron are in such close juxtaposition as they are in the Birmingham District?

A. There are no other known deposits of iron ore, coal and limestone in similar juxtaposition in this country or in any other country.

Q. What effect does that have upon the cost of production of pig iron?

A. It results in a reduction of the cost of assembling those elements, and consequently a lower cost of production.

Q. Is the cost of transportation to the point where they are consumed reduced?

A. That is what I mean when I say the assembling cost; the bringing of those elements to a common point where they may be reduced.

Q. Is that an important factor in cost?

A. It is most important.

Q. Is there any other section of the United States, where with machinery and furnaces of like capacity, where iron can be produced as cheaply as it can in the Birmingham district?

MR. REED: That is objected to until the witness is shown to have some knowledge of the cost of operations there at the present time.

By MR. DICKINSON:

Q. Did you have any knowledge of the cost of operation, or the general question of the cost of operation, resulting from the relative situation of coal and iron ore and limestone at that time?

MR. REED: At what time?

MR. DICKINSON: In 1907?

A. I think so. I was consulting engineer for the Birmingham Coal & Iron Company.

By MR. DICKINSON:

Q. State whether or not in 1907 there was any section of

the United States where pig iron, with machinery of equal character and facilities of equal character, in the way of machinery and furnaces, could be made as cheaply as it could in the Birmingham District?

A. No. Pardon me for suggesting it, but if your question were put the other way, that if you introduced into the Birmingham district machinery equal to any other point, you would bring out what you want more clearly. What I mean is if they had machinery in the Birmingham District which was up to what it is in these other districts.

Q. That is the reason I put the question as I did, that if the machinery there were of like character with machinery elsewhere; in other words, the machinery being the same, would not these other advantages enable them to make iron cheaper there than in any other part of the United States. Now, do you understand the question?

A. They would be able to produce cheaper there than anywhere else.

MR. REED: Is not that a trifle speculative?

By MR. DICKINSON:

Q. Is it speculative, or do you know?

A. I should think it was almost a mathematical conclusion.

Q. What percentage of the red ore within the Birmingham District was owned by the Tennessee Coal, Iron & Railroad Company, in 1907?

MR. REED: That is objected to because the witness has not been shown to be qualified on that point, and has stated that he is not competent.

MR. DICKINSON: I do not recall that he has stated that he is not competent.

By MR. DICKINSON:

Q. Do you know where the red ores lay in 1907 in respect to the Birmingham District?

A. Yes, sir.

Q. Do you know who owned them?

A. I know who owned them in 1904, and who owned a part in 1907, and I have no reason to believe that the ownership had

changed, but I do not know the exact proportion which the T. C. & I. held of the total in 1907.

Q. In 1904 what proportion did they hold?

A. According to the district we took we estimated that they held about 70 per cent of the district as then defined; that is to say from Irondale to Sparks Gap.

Q. State whether or not, outside of the holdings of the Tennessee Coal, Iron and Railroad Company, in 1907, and the Woodward Company, and the Sloss Company and the Republic Iron Company, there were any large bodies of iron ore lying together in the Birmingham District which were available for sale or purchase by any one going into the manufacture of iron.

MR. REED: Do you mean in 1904?

MR. DICKINSON: 1907.

A. None that I know of.

By MR. DICKINSON:

Q. State whether or not you looked over the field about that time.

A. I was in the field in 1905, 1906 and 1907, with a view of the purchase of iron ores in the two first years, 1905 and 1906.

Q. Assuming, Mr. Perin, that equal facilities in the way of furnaces and other works for the production of iron in the Birmingham District and at Pittsburg, what, in 1907, would have been the relative cost of producing pig iron at those two places? That is, if one had been cheaper than the other, which would have been cheaper, and about how much a ton?

MR. REED: That is objected to as calling for a speculative answer.

A. I presume the actual difference was about \$4.

MR. REED: I object to the witness's statement of his presumption as to cost, and I object further on the ground that he is not shown to be competent to testify to the cost of making pig iron in Pittsburg.

By MR. DICKINSON :

Q. Do you know anything about the cost of producing iron in Pittsburg?

A. I have seen the cost sheets of several independent furnaces there and talked it over with those who were in the iron business.

Q. And you were informed as to the cost?

A. I was.

Q. Were you informed as to the cost, approximately, of producing it in the Birmingham district at that time?

A. I was.

Q. What would you say was the difference, assuming that the machinery was just the same and the furnaces were of the same character?

A. You are assuming that the furnaces were of the same character. You see that fact did not exist. They were not.

Q. Taking them as they were, if you know, state what the difference was.

A. As they were, comparing the two plants, the difference was about \$4.

Q. Were the plants in Birmingham equal in character to the others?

A. They were not.

Q. If they had been equal, would the difference have been still larger in favor of Birmingham?

MR. REED: That is objected to as calling for a speculative answer.

A. No, sir. The difference would have been less in favor of Birmingham.

By MR. DICKINSON :

Q. You mean that the Birmingham machinery was superior?

A. Inferior.

Q. It was inferior?

A. Yes.

Q. If the Birmingham machinery was inferior at that time, and there was \$4 difference, suppose the Birmingham machinery had been brought up to the state of perfection of the

Pittsburg machinery, then would the difference have been less?

A. I should have said greater.

MR. SEVERANCE: I think you misunderstood his answer. I understood him to say that if the machinery in the Birmingham district was brought up to the level of that in the Pittsburg district, on account of the cost of assembling the ore and different elements being less, they could make pig iron for \$4 less in Birmingham.

By MR. DICKINSON:

Q. Did you mean that?

A. I meant the present difference is \$4 a ton, that is the difference in 1907 between the two plants. That is what I have in mind.

Q. But with the machinery equal—

A. There should be a wider spread.

Q. In favor of Birmingham?

A. In favor of Birmingham.

MR. DICKINSON: That is what I understood him to say, Mr. Severance.

(Whereupon, at 3:55 o'clock p. m., an adjournment was taken until to-morrow, Thursday, May 23, 1912, at 10:15 o'clock a. m.)

